K 1946

File No. S. Dwr. 4/46

Legal DEPARTMENT

'A' BRANCH

Examined

Subject :- Suits - Dharwar.

In the Court of the Civil Judge (Senior Div.), Dharwar -

(1) Special Suit No 37 of 1945 -
Ramabai Shrinivasrao Nadgir and five others — Plffs
Vs
The Province of Bombay --- Defts

(2) Special Suit No 38 of 1945 -
Hanmantrao Ganpatrao Heblikar and three others ... Plffs.
Vs
The Province of Bombay. Def 2

(3) Special Suit No 39 of 1945 -
Shrinivasrao Lakshmanrao Heblikar. Plff;
Vs
The Province of Bombay ... Def 2

(4) Special Suit No 40 of 1945.
Shripad Basvant Nadgir -- Plff;
Vs
The Province of Bombay. Def 2

(5) Special Suit No 51 of 1945.
Venkatrao Vithalrao Heblikar .. Plff;
Vs
The Province of Bombay. Def 2.

F. A. Nos. 37, 38 & 47 of 1948.

File No. S-Dwr-4/46.

Std. Sectt. Slip 24-B

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Legal Department File No...S...DWR 4/46

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Dharwar

C. S. No. 37 of 1945

Ramabai S. Nadgir and other

Vs.

State of Bombay

C. S. No. 38 of 1945

Hanmantrao G. Heblikar and others

Vs.

Province of Bombay

C. S. No. 39 of 1945

Shrinivasrao L. Heblikar

Vs.

Province of Bombay

C. S. No. 40 of 1945

Shripad B. Nadgir

Vs.

Province of Bombay

C. S. No. 51 of 1945

Venkatrao V. Heblikar

Vs.

Province of Bombay

P. T. O.

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Legal Department File No....S...DvR 4/46

Sr.No.	R.I./O.No.	Subject	Pages.
		Re:- for a declaration that Govt Resolution, Political and Services Dept No 923, dated 2nd Aug 1944 relating to Hebli Jaranjam in so far as it affects the suit properties is illegal and ultra vires.	

Dharwar Civil Suit Nos. 37 to 40 and 51 of 1945

These suits relate to certain lands forming part of the Hebli Saranjam estate in Dharwar District. The land are part of 200 mars (1 mar equal to 17 acres 27 gunthas) of land in Hebli village which in former times were assigned as watan lands for Patil, Kulkarni and Nadgir services. This was before the grant of the village as a Saranjam to the Hebli Jahagirdars. The grant which was made in 1748 included these 200 mars which were then under Kamavishi management of the state for recovery of the arrears of judi. In 1858 the Inam Commissioner who inquired into the title of the rent free estates in the Deccan, rejected the Jahagirdars' claim to hold the Hebli village as Sarva Inam - permanent rent free estate and declared it to be Saranjam. With respect to the 200 mars of land in ~~district~~ dispute the Inam Commissioner recommended in 1864 that except 7¼ mars and 31 ~~bighas~~ which had reverted to the Nadgirs, "the Kamavishi management of the remaining 192¼ mars had assumed a permanency of tenure which cannot justly be interfered with." ~~xxxfor~~ This decision which was accepted by Government gave rise to a series of litigation. The history of this previous litigation is long and extremely complicated. An attempt has been made in the accompanying brief to trace this previous history in logical sequence. The facts have been ~~granted~~ gathered from the several reported and unreported judgments of the High Court and the Privy Council in which these lands were the subject matter in dispute. The result of all these litigation is that the suit lands have to be treated as forming part of the Hebli jahagir held under a Saranjam tenure.

In 1942 the last Saranjamdar died. Thereupon by G.R.P.D.No. 923 of 2-8-1944 Government resumed the estate and regranted it free of all encumbrances to Krishnarao who is defendant No. 2 in Suit No. 51. The regrant expressly includes 192½ mars of the original watan lands which are ordered to be treated as

Saranjam property. The several plaintiff who are in possession of distinct parts of these lands have filed these suits contending that the lands being watan land, or private property of the plaintiffs, Government orders of 1944 in so far as they affect the ~~Government~~ property in plaintiffs' possession are illegal. Inthe brief it has been shown that these lands are neither watan lands not private property of the plaintiff but are Saranjam lands pertaining to the Hebli estate and therefore resumeable under the Saranjam Rules.

Sanction may be accorded to the defence of the suit on the lines of the appended brief and written statement.

RM
18/4/46

A.A.L.R. I agree RR 18/5

R.L.A Please 25/5/46

Ag. Secy P.W.S.D. 28/5/46

L. D.
28 MAY 1946

x UR. to P.R.S.D.
No. 3949
dt. 27th May 46.

Special Suit No. 37/45.

In the Court of the Civil Judge Senior Division, Dharwar.

Suit No. 37 of 1945.

Ramabai Shrinivasrao Nadgir & five others

1. Written statement on behalf of the defendant is as follows:-

1. Plaintiff's title to suit properties is denied. The suit properties form part of the Hebli Saranjam resumable at the pleasure of Government and are neither Watan nor the private properties of Plaintiff.

2. The allegations in plaint regarding the tenure of the 200 mars of land in the village of Hebli of which the suit lands form part are not admitted. It is true that they were held on Watan tenure on payment of Judi by the Nadgirs of Hebli prior to the Saranjam grant of the village of Hebli. But the Judi having fallen in arrears possession thereof was taken by the then Government in about 1723. In 1748 the whole village of Hebli including the said 200 mars of land was granted in Saranjam to the then Jahagirdars. The defendant therefore submits that the suit lands forming part of the said 200 mars minus 7¼ mars and 3 bighas which went in possession of the Nadgirs are Saranjam and neither Watan nor the private property of Jahagidars

3. In 1858 the Inam Commissioner decided that only 7¼ mars and 3 bighas was kadim watan and the remaining 192 and odd mars belonged to the Jahadirdars. The decisions of the Inam Commissioner was confirmed by Government and this decision has been construed by the judicial decisions to mean that the 192½ mars are neither watan nor the private property of either the Jahagirdars or the Nadgirs, ~~of the Hebli~~ but form part of

Hebli Saranjam.

4. It is denied that Government is estopped from treating the suit land as Saranjam. It is true that in 1908 Government by Government Resolution, Revenue Department, No.10129, dated 7th October 1908 construed the Inam Commissioner's report dated 9th ~~June~~ January 1865 as deciding the 120 mars to be Watan and ordered remuneration of village officers of Hebli to be levied from Sardar Laxmanrao. The latter being dissatisfied, filed C.S. No.2/13 against Government and the Nadgirs. In the appeal from the decision in that suit the High Court held that the 120 mars out of 200 mars which were in dispute therein were Watan and Government following that ruling, passed the Resolution No.923, dated 27th March 1924 holding that the Kadim Patilki, Kulkarni and Nadgir Lands were not to be resumed and the grantees were to be entitled only to the Mamul Judee and ordering 200 lands to be entered in watan register. The High Court's decision was subsequently reversed by the Privy Council in 1927 who held that the Watan Act was not applicable to the 200 mars which were not consequently liable for remuneration of the officers.

5. Subsequently in another litigation between Sardars Vithalrao and Laxmanrao the Junior Saranjamdar and the Junior members of their branches of the family for recovery of judee in respect of a part of the 200 mars of land the High Court held that the 200 mars of so called watan lands in Hebli, were really part of Saranjam grant of Hebli. In doing so, they considered the effect of the previous decisions of the P.C. wherein the sanad granted to the Jahagirdars and the decision of the Inam Commissioner were construed. The orders passed by Government therefore no longer survive in view of these authoritative judicial decisions.

6. Government was not a party to the High Court Appeal No. 3/1876, or to the suit of 1904 between the Jahagirdars and the Nadgirs and is therefore not bound by the decision therein. Neither is it bound by any private arrangement or compromise

between.....

between the Jahagirdars and the Nadgirs under which it is alleged either of them got or retained possession of the suit lands.

7. Government is similarly not bound by the partitions of 200 mars of land effected by the Jahagirdars in their family.

8. In the circumstances stated above the lands in the suit are saranjam lands and the G.R.P.D., No.923 of 2-8-1944 is legal and valid and bindings upon all the parties concerned. The allegations in the plaint that it is ultravires illegal and invalid and the various grounds mentioned in the plaint on which such allegations are based, are incorrect and hence not admitted.

9. The Government is not estopped from declaring the suit property to be Saranjam as alleged in thepalint, or resuming the same at their pleasure.

10. The defendant denies that the decisions in High Court Regular No. 3/1876, 29 Bom. L.R. 1484 and 43 Bom. L.R. 232 operate as res judicata as alleged in the plaint.

11. The lands in suit being held under a Saranjam tenure the suit is barred under sectionm 4(a) of the Bombay Revenue Jurisdiction Act, 1876.

12. The defendant denies the allegations in the paint regarding the manner of the enjoyment of the suit property. The plaintiffs have no proprietary rights in the suit lands, and their rights to enjoy are subject to the Saranjam Rules and to restrictions to be imposed by Government. The allegations made in the plaint in various paragraphs regarding the right of ownership claimed by plaintiffs over the suit lands are all denied.

13. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader, Dharwar,

I, ,District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 13 above is true according to the information receivedand believed to be true. This verification is made at on the day of 194 .

District Government Pleader,
Dharwar.

Kc.

No. 4116

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 1st June 1946

Subject:- Civil Suits Nos.37 to 40 and 51 of 1945

Memorandum.

The District Government Pleader, Dharwar is informed that the defence of the suits noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which is sent herewith in advance along with files I to VI.

2. Written Statements (in duplicates) to be filed in the suits are also enclosed.

for Remembrancer of Legal Affai

To

The District Government Pleader,
Dharwar.

Subd. for signature.

Issued

Lg R sent To press for printing

Sam 4/6

Lg R sent to the press for final proofs on 9-8-16

Sam 9/8

Subd. after issue.

2. Await press copies

2gR 9/6

AP 9/

Lewis

suits.

Dharwar.

For a declaration that Government Resolution, Political and Services Department, No. 923, dated 2nd August 1944 relating to Hebli Saranjam in so far as it affects the suit properties is illegal and *ultra vires*.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4116-A.

Bombay Castle, 1st June 1946.

Letters from the Collector of Dharwar, Nos. L.A.W. 458 to 463, dated the 17th January 1946—Forwarding papers in the suits noted in the margin and requesting sanction to their defence.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, DHARWAR.

Special Suit No. 37 of 1945.

Ramabai Shriniwasrão Nadgir and five others ... Plaintiffs;

versus

The Province of Bombay ... Defendant.

Special Suit No. 38 of 1945.

Hanmantrao Ganpatrao Heblikar and three others. Plaintiffs;

versus

The Province of Bombay ... ... Defendant.

Special Suit No. 39 of 1945.

Shriniwasrao Lakshmanrao Heblikar ... Plaintiff;

versus

The Province of Bombay ... ... Defendant.

Special Suit No. 40 of 1945.

Shripad Baswant Nadgir ... ... Plaintiff;

versus

The Province of Bombay ... ... Defendant.

Special Suit No. 51 of 1945.

Venkatrao Vithalrao Heblikar ... ... Plaintiff;

versus

The Province of Bombay ... ... Defendant.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 352, dated the 28th January 1946—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 4116, dated the 1st June 1946—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suits on the lines of the accompanying brief and the written statements filed in the suits.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Government.

G. R., No. 4116-A, L. D., dated the 1st June 1946.

To

*The Political and Services Department,
*The Commissioner, Southern Division,
*The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1946.

Copy forwarded for information and guidance to

Submitted after case
2. File in S. Div. /46 (new file)

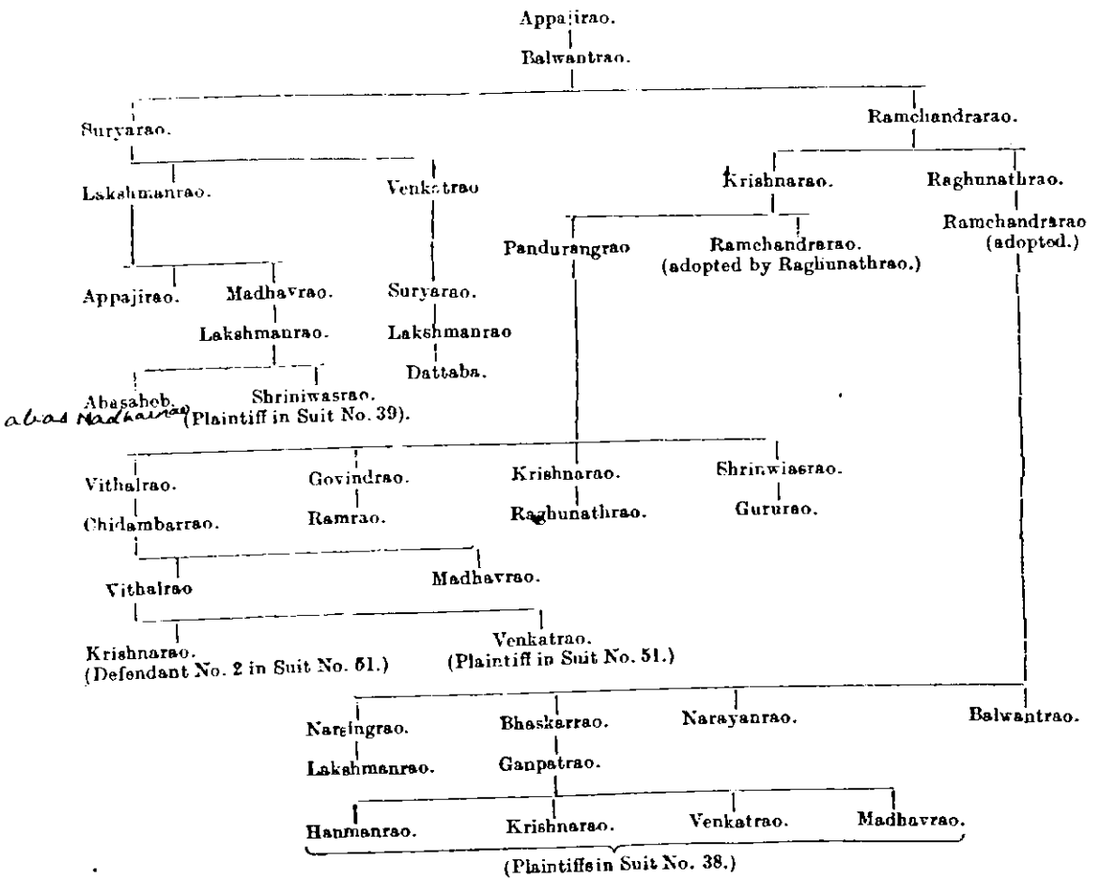
DHARWAR CIVIL SUITS NOS. 37 TO 40 AND 51 OF 1945.

Chronological Statement of Facts.

1. These five suits are filed by the plaintiffs noted in the margin against Government for a declaration that the Government Resolution (Political and Services Department), No. 923, dated 2nd August 1944, relating to Hebli Saranjam in so far as it affects the suit properties forming part of the 200 mars of Kadim Watan in the village of Hebli and instructions issued in pursuance of that Resolution to the village officers to remove the said properties from the Watan Category are illegal and *ultra vires*, and for costs.

Suit No. 37.
Ramabai Shriniwasrao Nadgir and five others.
Suit No. 38.
Hanmantrao Ganpatrao Heblikar and three others.
Suit No. 39.
Shriniwasrao Lakshmanrao Heblikar.
Suit No. 40.
Shripad Baswant Nadgir.
Suit No. 51.
Venkatrao Vithalrao Heblikar.

2. The lands in these suits were Patil, Kulkarni and Nadgir Watan lands in the village of Hebli, in Dharwar District. There were 200 mars of such lands (one mar being equal to 17 acres and 27 gunthas: see the statement of facts in *Vithalrao* v. *Baswant*, 39 Bom.L.R. page 572 at page 573), of which 80 mars were of Patil Watan, 40 mars were of Kulkarni Watan and 80 mars were assigned for the Nadgir Watan. The plaintiffs in Suits Nos. 37 and 40 are members of the original Nadgir Watan family. The plaintiffs in Suits Nos. 38, 39 and 51 are members of the Hebli Saranjam family. A geneology of the Hebli Saranjam family is given at page 125 of the case of *Gururao Shriniwas Heblikar* v. *Secretary of State*, reported in 19 Bom.L.R. page 117. The following geneology showing the relationship of plaintiffs in Suits Nos. 38, 39 and 51 is given for ready reference :—



The plaintiff in Suit No. 39 is the son of Lakshmanrao Madhavrao, a member of the senior branch of the Heblikar family while the plaintiffs in Suits Nos. 38 and 51 are members of the junior branch. The history of the Hebli Saranjam estate and of 200 mars of Watan lands is given in the Privy Council Judgment in *Laxmanrao* v. *Shrinivas*, 29 Bom.L.R. 1484 and also in *Shrinivas* v. *Secretary of State*, 24 Bom.

L.R. 214 and *Vithalrao* v. *Baswant*, 39 Bom.L.R. 572. The material facts are as follows.

3. In former times there were service watans of patil, kulkarni and nadgir in the village of Hebli. The Watan families held 200 mars of lands, subject to the payment to Government of a fixed judi, instead of full assessment. In the early part of the eighteenth century, the judi having fallen into arrears, the ruling power entered into possession of the watan lands and treated them as *Kamavishi*, or under management for the purpose of realising the arrears. This arrangement continued till 1748 A.D., when Abdul Majid Khan the Nawab of Savanur, granted to Balwantrao Appaji all lands in Hebli as a *jahagir* for services rendered to the Nawab's Government. These lands included the 200 mars of *Zebt* (attached) lands. The Sanad, dated the 16th March 1748, conferred upon the grantee "the Kasba Havur Hebli together with the hamlet and Vatanhal lands appertaining to *Zebt* (i.e., attached). Inams of Muccadums and Nadgirs and others ....." p. 21 of file VI. In the year 1819, there was a partition between the senior and junior branches of the Jahagirdars of Hebli, each branch taking a 100 mars of the watan lands. Out of these 200 mars the Nadgirs somehow obtained possession of 7¼ mars and 3 bighas, the remaining 192½ mars continued in the possession of the Jahagirdars of Hebli and were entered in their accounts under the heading of *Kamavishi*.

4. In 1852, the Inam Commission was set up under Act XI of 1852 for adjudication of titles to lands claimed to be wholly or partially rent free on the Presidency of Bombay. By about 1860, when the Inam Commission was sitting, Pandurangrao, the great-grandson of Balwantrao had become entitled to a four-anna share in the village and included in his share were 42½ mars of lands in dispute. That Commission, after inquiring into the claims of the Hebli Jahagirdars found that theirs was not a *sarva inam*, i.e., permanent revenue free grant and that they were holders under the Saranjam tenure. After that decision, there was an inquiry into Kadim Inams, that is to say, Inams which existed before the grant to the Heblikar Family. The proceedings of Major Etheridge (the Inam Commissioner) on this point are not available but it appears from his letter No. 1006, dated the 12th November 1864, in reply to a p. 25 do. reference from the Revenue Commissioner, that in 1862, he had settled 21 items to be Kadim on the best evidence then procurable. Subsequently on fresh evidence gathered from the land rolls of 1723, 1739 and 1747, he found that only two Nos. 7 and 13 were *bona fide* kadim, that is in existence prior to the grant to the Jahagirdars. He then went on to observe: "It is to be remarked however, that the land rolls referred to in the paragraph preceding, show that the Heblikars at the date of the acquisition of the village did not receive the items Nos. 15, 16 and 17, averaging 200 mars, as *bona fide* Khalsat, but as 'Coomavisee' (*Kamavishi*), though ..... the Coomavishi management remained as before, and as there is nothing to show that at any subsequent period even up to the present time it had altered, with the exception of 7¼ mars and 3 bighas which at some time unknown had reverted to the Nadgir, it may be allowed that the Coomavisee management of the remaining 192½ mars and 6 beegas has assumed a permanency of tenure which cannot justly be interfered with". Under these circumstances, Major Etheridge suggested that the Gram Joshee's land of 6 mars and the Nadgir's land of 7¼ and 3 Beegas be alone made amenable to settlement as held from Government. This recommendation of Major Etheridge was accepted by Government and the effect given to it can be seen from an entry in the Revenue Outward Register of Dharwar Taluka for 1864-65.

5. This decision gave rise to a series of litigations. In 1868, one Bisto Shankar Nadgir a member of the junior branch of the Nadgir family filed Suit No. 83 of 1868 against Narsingrao and Bhaskarrao, the sons of Ramchandrarao Raghunathrao for possession of 22 mars of these lands. As a result of this suit which went up in appeal to the High

Court in Appeal No. 3 of 1876, the 22 mars of land were restored to the Nadgirs. The remainder of the property continued to be with the Saranjamdars. Apparently at that time no distinction was drawn between the Saranjam property and private property and both the properties came to be partitioned and divided between the various Branches of the Saranjamdars. This state of things continued until 1898 when Government issued the Saranjam Rules and the practice began of resuming Saranjam property on the death of the Saranjamdar and regranting the same to such person as Government thought fit. In 1899, Pandurangrao died and in pursuance of the Saranjam Rules promulgated in 1898 resumed all the property of the deceased including his share in the 200 mars of the land in dispute and regranted it first to Narsingrao and later on to Vithalrao Chidambarrao. The *bhaubands* in possession of various shares of both Saranjam and Watan property objected to the resumption and regrant and filed a suit (No. 1 of 1911) against the Secretary of State for India contending that Government had no right to resume and regrant the Saranjam after Pandurangrao's death first to Narsingrao and then to Vithalrao. Their contention was that the Saranjam itself being a grant of the royal share of revenue only, all that the Government could do was to levy full assessment and not to dispossess the various holders of the Saranjam property. The lower Court dismissed the suit holding that the suit property being Saranjam, Government had the right to resume it and consequently the suit was barred under section 4 of the Bombay Revenue Jurisdiction Act. In appeal, the High Court held in *Gururao* v. *Secretary of State* (19 Bom.L.R. 117), that the grant of Saranjam was only of the royal share of revenue, that Government could therefore resume only what they had granted and that the right of occupation of the land subject to the payment of land revenue could and did survive resumption. This decision was however reversed by the Privy Council in *Secretary of State* v. *Lakshmibai*, 25 Bom.L.R. 527, wherein it was held that a Saranjam grant may be either of the soil or of the revenue, that there was no presumption that it was of the royal share of revenue only and that the quality of the grant must be determined on the facts in each case. In the case of Hebli, the Privy Council held that it was a grant of the soil itself and the suit was therefore barred under section 4 of the Revenue Jurisdiction Act. Although in this case, no distinction seems to have been made between the 200 mars of land and the rest of the village, it is important to remember at this stage that the effect of the Privy Council decision was that the whole of the village which included the 200 mars was resumed by Government as Saranjam land. However, the exact nature of this land came to be considered in another series of litigation in the following circumstances.

6. After the enactment of the Bombay Hereditary Offices Act, III of 1874, the revenue authorities, on application by members of the Nadgir family, began preparations of the patilki and kulkarniki watan registers in the village of Hebli. These proceedings continued for a period of fifteen years. On 17th July 1907, the Commissioner passed an order holding that under the Watan Act it was imperative for the Collector to determine who were the representative watandars and register their names without waiting for one or other rival claimants to procure a civil court's decision, that the Nadgirs were shown to be watandars as decided by the High Court in Appeal No. 3 of 1876 and that the representative watandars had been rightly selected from their family. He further held that the whole of the watan lands should be entered as such in the Watan Register, 80 mars, for the patilki watan and 40 mars for the kulkarniki watan as shown in Major Etheridge's letter of 9th January 1865, but that it would not be necessary to recover for the watan, from the Jahagirdars in possession, more than was required for the emolument of the officiators (*Laxmanrao* v. *Srinivas*, 29 Bom.L.R. 1484 at page 1492).

7. This order was confirmed in Government Resolution No. 10129, dated 7th October 1908 and in 1913 a sum of Rs. 969-0-8 was recovered from the Saranjamdar for the

emolument payable to the representative watandars. This led to the institution of Dharwar Suit No. 2 of 1913, by Laxmanrao Madhavrao Heblikar a member of the senior branch and holder of an eight-anna share in the Hebli Saranjam, against the Secretary of State and others for a declaration that the Jahagirdars of Hebli (including plaintiff and defendants Nos. 12 and 13 in that suit) were watandar patils and kulkarnis by virtue of the grant or by reason of their long, exclusive possession and enjoyment of the watan offices and emoluments that the Nadgirs (defendants Nos. 2 to 11) were not watandar patils and kulkarnis, that 120 mars of land as entered in the watan registers were not watan property and were not liable to contribution, and for cancellation of the watan register. By a subsequent amendment, the plaintiff sought to recover Rs. 969-0-8 recovered from him. The trial Court held that the decision of Government, confirming the recommendation of Major Etheridge was binding on the parties and entitled the plaintiff to hold the land free of assessment, that the lands had ceased to be watan lands and were not liable to contribution for the remuneration of the officiators. The Court also held that the plaintiffs' family had acquired the offices of watandar patils and kulkarnis by adverse possession, but that under section 4A of the Bombay Revenue Jurisdiction Act, 1876, the Court had no jurisdiction to cancel the watan register. The Secretary of State did not appeal against this decision but the plaintiff and defendants Nos. 2 to 7 filed cross appeals in the High Court which were decided in 1921 (*Shrinivas* v. *Secretary of State*, 24 Bom.L.R. 214). The High Court held (1) that the manner in which the watan lands were treated both by Government and the Jahagirdars showed that the lands had not become the absolute property of the Jahagirdars, (2) that it was not competent to the Jahagirdars to acquire the offices of Patil and Kulkarni by adverse possession, and (3) that assuming that the Nadgirs were entitled either by agreement or by custom to get back their Watan lands on payment of Judi, time would not begin to run against them until they were made aware that the Jahagirdars were setting up a title to hold the watan lands in their own right and there was nothing to show that the Nadgirs were aware of any alteration in the method of keeping village accounts.

8. Before pursuing further the course of this litigation in the Privy Council, it is necessary to notice here the immediate effect of the High Court's decision in 24 Bom. L.R. 214. One result was the passing of Government Resolution (Political and Services Department), No. 923, dated the 27th March 1924. That resolution dealt with the cases of succession to the four-anna share in the Hebli Saranjam estate held by the deceased Pandurangrao Krishnarao, and another four-anna share held by the deceased Narsingrao Ramchandrarao who had died in 1916. As regards the latter, Government had previously ordered by a Resolution No. 7301, dated 27th August 1918, that Narsingrao's share should be resumed and the estate attached and placed under the management of the Collector under Rule 5 (*a*) of the Saranjam Rules but that his brother Balwantrao and his nephews Ganpatrao and Ramrao should be allowed to remain in possession of their lands, provisionally, on payment of full assessment subject to Government's right to resume the lands in the event of the decision of Privy Council (in appeal from 19 Bom.L.R. 117) affirming such right of resumption. In the Resolution of 1924 it was ordered, having regard to the Privy Council decision in *Secretary of State* v. *Lakshmibai* (25 Bom.L.R. 527), that Pandurangrao's share should be resumed and regranted to Vithalrao and Narsingrao's share should likewise be resumed and regranted to his only son Laxmanrao; and the orders passed in the Resolution of 1918 in respect of Narsingrao's share were cancelled. Then in paragraph 4 of the Resolution, it was further directed that the Kadim Patilki, Kulkarniki and Nadgir lands were not to be resumed and regranted to the new grantees who were entitled only to the right of Mamul Judi and this right was granted along with other Saranjam property. This direction was obviously issued pursuant to the High Court's Judgment in 24 Bom.L.R. 214.

p. 83 of file VI.

Another result of that judgment was that the Nadgirs, encouraged by the High Court's view that the property had not become the absolute property of the Saranjamdars filed a suit (special Suit No. 4 of 1924) against Vithalrao Heblikar for possession of 47½ mars alleging that the property had been held by the Jahagirdars in trust for reimbursing themselves for the loss of judi out of the income and for restoring the lands to the watandars wherever the latter offered to pay judi regularly in respect of the said lands.

9. Meanwhile, as a result of the Resolution of 1924, the Saranjamdars Vithalrao and Laxmanrao had been recovering judi, from their *bhaubands* and probably from some of the Nadgirs. During the pendency of Suit No. 4 of 1924, the Privy Council reversed the High Court's judgment in 24 Bom.L.R. 214. Their Lordships held that the effect of the adjudication under Act XI of 1852 was to render the suit lands in the hands of the Jahagirdars not liable to contribution under Act III of 1874 and that the suit to that extent was not barred under section 4 of the Revenue Jurisdiction Act, 1876 (*Laxmanrao* v. *Shriniwas*, 29 Bom.L.R. 1484). When this decision was given, the two Saranjamdars (Vithalrao and Laxmanrao) stopped recovering judi from their *bhaubands*. Soon after this decision, however, Suit No. 34 of 1924 was decided in favour of the plaintiffs and against the Saranjamdars. The trial Court held that the Saranjamdars were in possession of watan lands as trustees for the plaintiffs, that they had never openly assented their hostile title to the knowledge of the plaintiffs and that the plaintiffs' claim was not barred by limitation. As a result of this decision, the Jahagirdars again began to recover judi from their *bhaubands* under the belief that the lands were watan lands and that judi was recoverable in whomsoever's possession the lands may be. They therefore filed assistance suits to recover judi, basing their right on the trial court's judgment in suit No. 34 of 1924. This led to further litigation. In 1932 the junior members of the Saranjam family filed Suit No. 475 of 1932 and three other suits (three of these being against Vithalrao and one against Laxmanrao) for a declaration that the Saranjamdars had no right to recover judi and for injunction.

10. Meanwhile, an appeal had been filed in the High Court against the decree in Special Suit No. 34 of 1924. In November 1936, this appeal was decided in favour of the Jahagirdars and the Nadgir's suit for possession was dismissed. The High Court held that the Jahagirdars did not hold the watan lands as trustees (*Vithalrao* v. *Baswant*, 39 Bom.L.R. 572). While this litigation was pending the four suits filed by the junior members of the Saramjamdar family were dismissed by the trial Court. Thereupon, four separate appeals (Nos. 130, 134, 135 and 137 of 1934) were filed in the District Court. The appeals were allowed and the plaintiff appeallants were held not liable to pay judi to the Saramjamdars in respect of watan lands in their possession on the authority of the Privy Council and the High Court in 29 Bom.L.R. 1484 and 39 Bom.L.R. 572, the appellate Court held that the 42½ mars of land in the suits which formed part of the 200 mars were not watan property, that it was not open to the Saramjamdars to contend that they were either watan or Saramjam lands in view of the fact in the litigation against Government and the Nadgirs, the Saramjamdars had contended that the 200 mars were their private, rentable and transferable property. From this decision, four second appeals (Nos. 586, 587, 588 and 592) were filed in the High Court. On 21st December 1939, the High Court allowed the appeal and held that the junior members of the Saranjam family held the 42½ mars subject to the liability to pay judi, that it was not the private property of Pandurangrao, that according to the Privy Council decision in 25 Bom.L.R. 527, the whole of the Hebli village including the 200 mars in question was granted as a Saranjam, that what Government resumed in 1894 and what it regranted in 1901 and 1904 was the share of Pandurangrao which included 42½ mars of land and that the result of this resumption and regrant was to treat this

p. 43, file IV.

land as Saranjam (*see* the High Court's judgment at pp. 43-65 of File IV).

11. This concludes the history of the previous litigation connected with the 200 mars of land. The subsequent events leading to the institution of the present suits may now be briefly traced. On 21st November 1936, Laxmanrao Madharao the eight anna sharer in the Hebli Saranjam (appellant in 29 Bom.L.R. 1484) died. By Government Resolution (Political and Services Department) No. 923, dated 20th September 1938, Government resumed his share and regranted it, free of all encumbrances to his son Madhavrao *alias* Abasaheb. In 1940, in a partition between Madhavrao and his younger brother Shriniwas (Plaintiff in suit No. 39 of 1945) the lands shown in schedule A to the plaint (part of 200 mars) were allotted to the share of the plaintiff and the lands mentioned in Schedule B were given to plaintiffs' mother Lakshimibai for her maintenance. In 1942 Vithalrao Chidambarrao the four anna sharer died, and by Government Resolution (Political and Services Department) No. 923, dated 2nd August 1944 Government resumed his share and regranted it to his son Krishnarao. The relevant portion of that resolution is as follows :—

"In view of the Privy Council decision in *Laxmanrao* v. *Shriniwas* (Indian Law Reporter Bombay LI, 840), the Watan lands referred to in paragraph 4 of Government Resolution, Political Department, No. 923, dated 27th March 1924, are no longer watan lands, with the exception of 7¼ and 3 bighas comprised in the enclosed Statement A. The right to the mamul judi on the 7¼ mars and 3 bighas should be regranted to the new Saranjamdars along with the Saranjam property. The lands in the possession of Raghunathrao Krishnarao, Ramrao Govindrao and Laxmibai Bhratar Gururao shown in the enclosed statement "B", should be removed from the watan Inam category and formally resumed and regranted along with the rest of the Saranjam. The persons in actual possession of the lands should not be disturbed. They should however continue to pay to the principal Saranjamdar of their branch the amount which they have been paying as "Mamul Judi", the amounts being described hereafter as rent, since the lands are removed from the watan category and will be treated as Saranjam lands. The "rent" should be levied only on the lands on which mamul judi has been paid heretofore and not on the others. The survey numbers and the amount of rent to be levied are shown in the Statement B referred to above."

It appears from the plaints in these suits that on 30th October 1944 the above orders were notified in the village by beat of drum and instructions were issued to the village officers of Hebli to alter the village records by removing the properties in these suits and other lands forming part of the 200 mars from watan category and including them in the saranjam. On 25th March 1943, Madhavrao Laxmanrao, the eight anna sharer, to whom a regrant was made by the Resolution of 1938, died. Government thereupon resumed his share and regranted it, free of all encumbrances to his son Seshgirirao. The latter being a minor, it was further ordered that the estate should be attached and placed under Government under Rule 5A of the Saranjam Rules (*vide* Government Resolution, Political and Services Department, No. 923, dated the 7th September 1945).

12. The plaintiffs thereafter gave notices of suits under section 80 of the Civil Procedure Code on the following dates :—

Suit No. 37 of 1945	...	2nd April 1945.
Suit No. 38 of 1945	...	16th February 1945.
Suit No. 39 of 1945	...	2nd April 1945.
Suit No. 40 of 1945	...	2nd June 1945.
Suit No. 51 of 1945	...	29th July 1945.

Thereafter the suits were filed in the Court of the Civil Judge, Senior Division, Dharwar.

Grounds of Defence.

It is common ground that the lands in dispute in these suits form part of the 200 mars of ancient patil, kulkarni and nadgir wantan lands in the village of Hebli. The reliefs claimed in all the suits are also identical, namely, that the orders in the Resolution of 1944 regarding the resumption and regrant of the late Vithalrao's share in the Hebli saranjam to his son Krishnarao do not affect the suits lands in the possession of the plaintiffs. It will be convenient to classify the plaintiffs in the five suits into two distinct groups. The plaintiffs in Suits Nos. 37 and 40 are the members of the original Nadgir watan family while in Suits Nos. 38, 39 and 51 the plaintiffs are the members of the different branches of the Hebli saranjam family. The plaintiff in Suit No. 51 is the brother of Krishnarao to whom Vithalrao's estate has been regranted under the Resolution of 1944. The contentions of the plaintiffs in all the suits are almost identical, the only distinctive feature being the origin of the title claimed by the plaintiffs in respect of the lands in their possession. The plaintiffs in Suit No. 37 claim 5¼ mars of land which had been acquired by their ancestors from Madhavrao Laxmanrao a member of the senior branch of the Jahagirdars (*vide* paragraph 6 of the plaint). The plaintiff in Suit No. 40, who is also a member of the Nadgir watan family lays claim to a part of the 22 mars acquired by his grandfather by virtue of the High Court's decree in Appeal No. 3 of 1876 from the decree in Suit No. 83 of 1868 (plaint paragraph 5). The plaintiffs in Suit No. 38 who are the sons of Ganpatrao Bhaskarrao claim to be entitled to that part of the watan land which was allowed to remain in possession of Balwantrao Ramchandra and Ganpatrao Bhaskarrao under the orders in Government Resolution (Political Department), No. 7301, dated 27th August 1918. In Suit No. 39 the plaintiff who is the son of the late Laxmanrao Madhavrao claims the 100 mars which were the subject matter in Suit No. 2 of 1913 finally decided by the Privy Council (*Laxmanrao* v. *Shriniwas*, 29 Bom.L.R. 1484). Lastly, the claim in suit No. 51 relates to that part of the 200 mars which was in possession of Vithalrao the late saranjamdar. The Nadgirs contend that the property in the suit while originally watan has not changed its tenure and cannot therefore be treated as saranjam resumable on the death of the last saranjamdar. The Jahagirdars also raise a similar contention and further add that the acceptance by Government of Major Etheridge's recommendations in 1865 had converted the property into private property of the Heblikars which was therefore not liable to be resumed and regranted on the death of the saranjamdar. In addition it is contended by all the plaintiffs (1) that Government having for a long period of time treated this property as watan property is by its own conduct and admissions estopped now from contending that it is saranjam property and (2) that the decisions in Civil Appeal No. 3 of 1876, 29 Bom.L.R. 1484 and 43 Bom.L.R. 232 holding the said property to be watan operate as *res judicata* and it is not now open to Government to ignore those decisions and claim a right inconsistent with them.

2. In view of these pleadings the main questions for determination in these suits are—

(*a*) whether the 200 mars of land except 7¼ mars and 3 bighas originally assigned for watan in the village of Hebli are of a saranjam tenure or continue to be watan property ;

(*b*) whether Government is by any conduct or admissions estopped from contending that those lands are of a saranjam tenure ;

(*c*) whether the decisions in Appeal No. 3 of 1876, 29 Bom.L.R. 1484 and 43 Bom.L.R. 232 operate as *res judicata*.

3. To understand the nature of the tenure of the 200 mars of land, it is pertinent to refer once more to the sanad of 1748 granted to Balwantrao Appaji and the Inam Commissioner's recommendations. The sanad was in these terms : "In these days when there is hostility with Alikhan, your gallant self, to preserve the real friendship, attended personally

with your army and several times for the sake of friendship have rendered service to the Sarkar, at the risk of your life, which has greatly impressed us; therefore, we ..... have conferred upon you ..... the Kasba of Havur Hebli together with the hamlet and vatanhal and lands appertaining to "*Zebt*" Inam of Muccadum and Nadgirs and others ..... by way of perpetual Inam exclusive of taxes ....." The grant was thus by way of reward for military assistance and personal service rendered to the State which is the essential characteristic of saranjam tenure. It is significant to note that this grant included lands appertaining to zebt Inams of Muccadum and Nadgirs which are none other the 200 mars in dispute. The Inam Commission set up under Act XI of 1852 held a two-fold inquiry in the case of the Hebli village. On 31st July 1858 Major Gordon, as the Inam Commissioner gave his decision rejecting the Hebli Jahagirdars' claim to hold the village a *Sarva Inam* (permanent revenue free grant) and holding that it was held under a saranjam tenure. This was followed by another inquiry into the nature of the 200 mars which were formerly Kadim Inam lands. To repeat Major Etheridge's findings on this point, the Heblikars had not received these lands as *bona fide khalsat*, but as as *coomavisee*. ..... and as there was nothing to show that at any subsequent period it had altered, with the exception of 7½ mars which at some time unknown had reverted to the Nadgir, the Coomavisee management of the remaining 192½ mars had assumed a permanency of tenure which could not justly be interfered with. Thus the result of Major Etheridge's finding was that only 7½ mars and 3 bighas of land were liable to settlement as Kadim watan and the remaining lands had to be continued with the Heblikars. Having regard to the terms of the original grant of 1748 and the Inam Commissioner's decision of 1858, it is reasonable to impute to Major Etheridge, an intention to identify the tenure of these 192½ mars with that of the rest of the Hebli village. Any other interpretation of his finding would be inconsistent with the documents under reference.

p. 23, file IV.

4. This conclusion is also supported by the ultimate result of the litigation commencing with Suit No. 1 of 1911. It will be recalled that this suit was filed as a result of Government's order of resumption and regrant of the four anna share of Pandurangrao and its regrant to Vithalrao. This also included a four anna share in 200 mars of land in dispute. The case ultimately reached the Privy Council who held in *Secretary of State* v. *Laxmibai*, 25 Bom.L.R. 527 that the grant in the case of Hebli village was a Saranjam grant of the soil itself. Although the distinction between the 200 mars of land and the rest of the village was not brought to their Lordships notice, the judgment related to the whole village of Hebli which included the suit lands and is therefore decisive of the fact that these lands are of a Saranjam tenure. This was the view held by the Bombay High Court in Second Appeals Nos. 586, 587, 582 and 592 and First Appeal No. 183 of 1937 to which reference has already been made (*vide* C. S. F., para. 10). In dealing with the case of *Secretary of State* v. *Laxmibai*, Beaumont C. J. observes :—

> "The contention in the lower Court seems to have been that the property was Sarva Inam, which in effect means that it was the private property of Pandurangrao, but in the Privy Council the question principally argued was whether the Saranjam was the grant of the soil or the grant of the royal share of revenue and their Lordships decided that the Saranjam was the grant of the soil, and the Government were entitled to resume these lands and that the question could not be litigated in the Civil Court."

That was the actual decision. It is true that in that case no distinction seems to have been made between the 200 mars and the rest of the village, but the decision is that the whole of the village, which included the 200 mars, was property resumed by Government on the death of Pandurangrao as Saranjam land, and it seems to me that it is not open to us in this litigation to hold that the 200 mars were not Saranjam lands.

Referring to the Privy Council decision in *Laxmanrao* v. *Shriniwas*, 29 Bom.L.R. 1484, the Chief Justice said:

"The contention of the learned Government Pleader who appears for the Respondents in this case is that the effect of that decision was that the property in suit was not watan property but was private property of Pandurangrao. I will assume that the effect of the decision was to hold that the property was not watan property, but it was not relevant to consider whether it was the private property of Pandurangrao, because the Plaintiffs in that case were prior holders of watan property and Pandurangrao's title was not in question. As I read the earlier decision of the Privy Council in *Secretary of State for India* v. *Laxmibai*, it was then held that Pandurangrao's property was Saranjam property and property resumed by Government on his death, and in my opinion *Laxmanrao* v. *Shriniwas Lingo* does not really assist in this case except to the extent that I am prepared to assume that the Privy Council held in effect that the property in the suit was not watan property."

5. It is however contended that Government has treated this property as watan property for a long time and is now estopped from contending that it is Saranjam property. This contention does not appear to be tenable. As a matter of fact, after the death of Pandurangrao in 1899, Government had resumed these lands and had attached them under Rule 5A of the Saranjam Rules with a view to their being eventually regranted to Vithalrao as soon as he was fit to be entrusted with the estate. This shows that at that stage at least the lands were regarded as part of the Saranjam. The Resolution of 1908 ordering the suit lands to be entered in the Watan Register as Patil and Kulkarni watan lands was passed on the Commissioner's recommendation which in turn was based on the High Court's decision in Appeal No. 3 of 1876 (*vide* C. S. F., para. 6). The Resolution of 1924 ordering not to resume the kadim Patil, Kulkarni and Nadgir watan lands was also passed in consequence of the High Court's decision in *Shriniwas* v. *Secretary of State*, 24 Bom.L.R. 214 (*vide* C. S. F., para. 8). These orders do show that Government continued for some time to hold that the lands in question were watan lands of the Patil, Kulkarni and Nadgir families, but it should be noticed that the orders of 1924 were passed after the Privy Council's decision in *Laxmibai* v. *Secretary of State*, in which the grant including the 200 mars was held to be a Saranjam grant of the soil itself. As observed by Sen J. in his judgment in the four second appeals, Government should have reversed their position and treated the grant of 200 mars as grant of the soil. Moreover, in *Laxmanrao* v. *Shriniwas* also, the Privy Council held the 120 mars which were in dispute were not watan lands and were not liable to contribution for the remuneration of the officiators. The orders of 1929 were to some extent provisional pending the decision of the Privy Council (*vide* Judgment of Sen J., p. 63 of File IV) and it may probably be for that reason that no fresh orders were passed after *Laxmanrao* v. *Shriniwas* was decided. It seems clear, therefore, that what Government did from time to time was to give effect to the view taken by the High Court. It is therefore open to Government in view of the High Court's judgment in the four second appeals to treat the 192½ mars of which the suit lands are part, as Saranjam and to resume and regrant it under the Saranjam Rules. There is thus no substance in the contention that Government is estopped from treating the suit lands as Saranjam lands.

6. The last contention is that the decisions in Appeal No. 3 of 1876, and in *Laxmanrao* v. *Shriniwas*, 29 Bom. 1484 and *Ramabai* v. *Government of Bombay*, 43 Bom.L.R. 232 operate as *res judicata*. The appeal No. 3 of 1876 which arose from Suit No. 83 of 1868 was in respect of 22 mars of land. The High Court upon the acknowledgments of the Jahagirdars, which were construed in favour of the Nadgirs decreed the claim for possession of the 22 mars.

The finding proceeded on the assumption that in 1868, having regard to the previous acknowledgments and offers, the claim to possession was not barred. In these suits the matter rests on entirely different footing and moreover Government not being a party to the Suit No. 83 of 1868, that decision cannot operate as *res judicata*. The effect of the decision in *Laxmanrao* v. *Shriniwas* has been explained in the Judgment of Beaumont C. J. to which reference has already been made. That Judgment also cannot operate as *res judicata*. The last case of 43 Bom.L.R. 232 is also irrelevant, and of no assistance to the plaintiffs. That case cannot be said to have decided the tenure of the 192½ mars of the lands. The plea of *res judicata* is therefore clearly untenable.

7. It is therefore established beyond doubt that the lands in these suits which form part of the 200 mars minus 7¼ mars and 3 bighas are Saranjam lands. If so, they must be held and inherited according to the rules laid down by Government. Under Rule 5 of the Saranjam Rules every Saranjam is held as a life estate and is liable to be formally resumed and regranted on the death of the holder, to the next holder as a fresh grant free from all encumbrances save such as may specially be imposed by Government itself. Under Rule 6, a Saranjam is incapable of partition. It was therefore within the competence of Government, on Vithalrao's death in 1942, to resume the entire estate including the lands in dispute and to regrant it as a fresh grant to another person who in their opinion was entitled as the next holder. Government were not a party to the Suit No. 83 of 1868 and would not therefore be bound by the decision in Appeal No. 3 of 1876 under which 22 mars of these lands went into the possession of the Nadgirs. Nor would Government be bound by any private agreements or compromises between the Jahagirdars and Nadgirs under which any of them might have acquired possession of any part of these lands. The result is that the orders passed by Government in the Resolution of 1944 are lawful and plaintiffs' contentions to the contrary are not sustainable.

8. *Jurisdiction.*—The lands being thus granted and held as Saranjam, the civil courts jurisdiction to entertain the claim in these suits is ousted by section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876 (*Secretary of State* v. *Laxmibai*, 25 Bom.L.R. 527; *Daulatrao* v. *Government of Bombay*, 45 Bom. L.R. 214).

9. For the foregoing reasons therefore it should be contended that the suits fail and should be dismissed with costs.

55

Suits.
Dharwar.

For a declaration that Government Resolution, Political and Services Department, No. 923, dated 2nd August 1944 relating to Hebli Saranjam in so far as it affects the suit properties is illegal and ultra vires.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 11668
Bombay Castle, 5th December 1947.

Read Government Resolution, Legal Department, No.4116-A, dated the 1st June 1946.

Letter from the District Government Pleader, Dharwar, No. 656, dated the 14th October 1947 stating that the suit noted in margin was decided by the Civil Judge, Senior Division, Dharwar, on 13th October 1947, when the following order was passed respectively.

In the Court of the Civil Judge, Senior Division, Dharwar. Special Suit No. 37 of 1945.	
Ramabai Shriniwasrao Nadgir and five others - - - Plaintiffs Vs- The Province of Bombay - Defendant;	"It is declared that the Government Resolutions of the year 1944-45 and 1946 so far as they affect the suit property and the subsequent instructions issued to the village officers of Hebli to effect alterations in the village Registers are ultra vires, illegal and void. It is declared that the Resolutions and the subsequent instructions cannot affect the suit property in possession of the plaintiffs. The plaintiffs shall get their costs from the defendant who shall bear his own"

Letter from the Collector of Dharwar No.L.A.W.-457, dated the 6th November 1947 recommending that an appeal against the decision of the Civil Judge, Senior Division, Dharwar, dated the 13th October 1947 may be filed in the High Court, Bombay, and forwarding papers in the case.

RESOLUTION:- Sanction is accorded to the institution of an appeal in the High Court, Bombay, against the decision of the Civil Judge, Senior Division, Dharwar, dated 13th October 1947 on the line of the brief accompanying Government Resolution, Legal Department, No. 4116-A, dated the 1st June 1946.

Subd. for signature.
Orders at pps 12+13
4/12
A.S. 4/12

By order of the Governor of Bombay,

Original
R. M. Mehta,
Assistant Secretary to Government.

As may please sign the other copies.
5/12
A.S.

To
The Political and Services Department,
The Commissioner, Southern Division
The Collector of Dharwar,
The District Government Pleader, Dharwar,
The Government Pleader, High Court Bombay (with papers of the case.

10 Kd. 4.12.
Issued 8/12

Suits. 23 57 — 23
Dharwar.

For a declaration that Government Resolution, Political and Services Department, No.923, dated the 2nd August 1944 relating to Bebli Saranjam in so far as it affects the suit properties is illegal and ultra vires.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 11673
Bombay Castle, 5th December 1947.

Read Government Resolution, Legal Department, No. 4116-A dated the 1st June 1946.

Letter from the District Government Pleader, Dharwar, No. 656, dated the 14th October 1947 - stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Dharwar, on 13th October 1947, when the following order was passed :-

In the Court of the Civil Judge, Senior Division, Dharwar. Special Suit No. 40 of 1945.
Shripad Baswant Nadgir - Plaintiff; Vs. The Province of Bombay - Defendant;

"The Government Resolution of 1944,1945 and 1946 so far as they affect the suit property and the subsequent instructions issued to the village officers of Hebli to effect alterations in the village Registers are ultra vires, illegal and void and it is declared that the resolutions and the subsequent instructions do not affect the suit property in possession of the plaintiff. The plaintiff shall get his costs from the defendant who shall bear his own."

Letter from the Collector of Dharwar, No. L.A.W. 457, dated the 6th November 1947 recommending that an appeal against the decision of the Civil Judge, Senior Division, Dharwar, dated the 13th October 1947 may be filed in the High Court, Bombay, and forwarding papers in the case.

RESOLUTION:- Sanction is accorded to the institution of an appeal in the High Court, Bombay, against the decision of the Civil Judge, Senior Division, Dharwar, dated the 13th October 1947 on the line of the brief accompanying Government Resolution, Legal Department, No. 4116-A, dated the 1st June 1946.

Submitted for signature.
Orders at pgs 12 & 13.
4/12
A.S.

By order of the Governor of Bombay,
Original. R. M. Mehta
R. M. Mehta,
Assistant Secretary to Government.

To
The Political and Services Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The District Government Pleader, Dharwar,
The Government Pleader, High Court, Bombay (with papers of the case).

10Kc.
2.11. issued

L.D.R.I.No. 12164 dated
9-10-47.

Submitted.

Please see the P.& S.D. note at pp. 93-94 ante. By G.R. P.&S.D. No. 923 dated 2nd August 1944 and No. 923 dated the 8th August 1946, Government directed that the lands in possession of Nadgirs should be removed from the Watan Category and be made liable to full assessment under S. 45, L.R.C. and that "Mamul Judi" should be paid to the Saranjamdar. Being aggrieved by these orders, the Nadgirs filed two suits being Suits Nos. 37 and 40 in the Court of Civil Judge, Dharwar and the question referred to R.L.A. is whether execution of Government orders regarding levy of assessment and payment of mamul judi should be held up pending the decision of the Court.

Both the suits have been decided in favour of the Nadgirs and it is declared that :-

"Government Resolutions of the year 1944-45 and 1946 so far as they affect the suit property and the subsequent instructions issued to the village officers of Hebli to effect alterations in the Village Registers are ultra-vires, illegal and void. It is declared that the Resolutions and the subsequent instructions cannot affect the suit property in possession of the plaintiffs." Government have preferred appeals against these decisions (vide G.R. L.D. Nos. 11668 and 11673 dated the 5th December 1947) and as the matter is directly pending in the appeals, it would not be possible for Government to enforce its orders.

11/12/47

Re - Hebli Saranjam

A.S. : I agree. Since the two suits filed by the Nadgirs have been decided against Government, the orders in the G.Rs. of 1944

and 1946 ; cannot be enforced, unless and until the lower court's decree is reversed in appeal. The restitution of appeals in the High Court has already been sanctioned by S.R. & O. No. 11668 and No. 11673 both dated 5th December 1947.

RW
11/12/47

R L A 11/12

RR to file as reply to PUSD

29/12/47

61 27

Office of the R.L.A.

Re. Hebli Saranjam.

Since the two suits filed by the Nadgirs have been decided against Government, the orders in the Government Resolutions of 1944 and 1946 cannot be enforced unless and until the lower courts' decree is reversed in appeal. The institution of appeals in the High Court has already been sanctioned by G.R., L.D., No.11668 and No.11673 both dated 5th December 1947.

12/12

OC
Remembrancer of Legal Affairs.

x with file 923

U.R. to P.& S.D., No. 2015, dated the 13/14 December 1947.

LRP.
12/12. Subd. for signature.

29/12/12 AS 12/12/47

RLA

13/12

Sabd. after issue.

2. Rie in S. Dwr 4/46.

29.R
15/12

RR 15/12/47

S. Dwr 4/46

16/-

Suits.
Dharwar.
For a declaration that Government
lution Political and Services Deso-
ment, No. 923, dated 2nd August rt
relating to Hebli Saranjam in so a
as it affects the suit properties
illegal and ultra vires.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 757
Bombay Castle, 11th August 1948.

Read Government Resolution, Legal Department, No. 4116-A, dated the 1st June 1946.

Letter from the District Government Pleader, Dharwar, No. 656, dated the 14th October 1947, stating that the suits noted in the margin were decided by the Civil Judge, Senior Division, Dharwar,

In the Court of Civil Judge, (Senior Division), Dharwar. Special Suit No. 38 of 1945	noted in the margin were decided by the Civil Judge, Senior Division, Dharwar,
Hanmantrao Ganpatrao Heblikar and three others - Plaintiffs; Vs. The Province of Bombay.- - - - -Defendant	
Special Suit No. 39 of 1945.	
Shriniwasrao Lakshmanrao Heblikar - Plaintiff; Vs. The Province of Bombay - - - Defendant	

on the 13th October 1947, when the following order was passed :-

"Dismissed with costs".

RESOLUTION:- The result of the suits is recorded.

By order of the Governor of Bombay,

R. M. Mehta
R. M. MEHTA,
Assistant Secretary to Government.

To

The Political and Services Department,
The Commissioner, Southern Division,
The Collector of Dharwar.

7Kc. 10.8.

Suits.
Dharwar.
For a declaration that Government Resolution Political and Services Department No. 923, dated the 2nd August 1944 relating to Hebli Saranjam in so far as it affects the suit properties is illegal and ultra vires.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 8098
Bombay Castle, 24th August 1948.

Read Government Resolution, Legal Department, No. 7571, dated the 11th August 1948.

Letter from the Collector of Dharwar No. LAW/457, dated the 31st July 1948, requesting sanction to the defence of Civil Appeal No. 48 of 1948 in the High Court, Bombay, filed by the above named plaintiffs in the suit noted in the margin.

In the Court of Civil Judge, (Senior Division), Dharwar.
Special Suit No. 38 of 1945.

Hanmantrao Ganpatrao Heblikar and 3 others - Plaintiffs;
Vs.
The Province of Bombay - Defendant

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No. 48 of 1948 in the High Court, Bombay, on the grounds of the brief accompanying Government Resolution, Legal Department No. 4116-A, dated the 1st June 1946 and the favourable grounds contained in the judgment of the Civil Judge, Senior Division, Dharwar, dated the 13th October 1947.

By order of the Governor of Bombay,

Original R. M. Mehta

R. M. Mehta,
Assistant Secretary to Government.

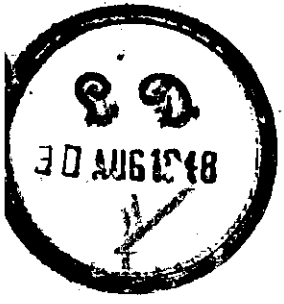
To
The Political and Services Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The District Government Pleader, Dharwar,
The Government Pleader, High Court, Bombay, with the copy of appeal memo.

Issued 25/8/48

10.Kc. 20.8.

37

No. 876 dated 27 Aug '48.
Office of the Dist Govt Pleader,
Dharwar.



To

The Remembrancer of Legal Affairs,
Bombay.

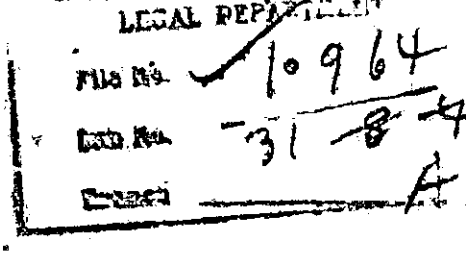
Subject:- Dharwar Civil Suit No.51 of 1945
V.V.Heblikar V. The Province of Bombay
.....

Sir,

With reference to your Memo No.7767 dated 14th August 1948, I have the honour to state that the above suit was dismissed for default on 22-3-47 when the following order was passed:-

"The suit is dismissed. The plff shall pay one set of legal costs to deft No.1 and another set to deft No.2 and he shall bear his own"

22-3-1947.



Yours faithfully,

Dist Govt Pleader.

Subd.

~~The D.Ajr Dharwar for info~~

Dharwar Civil Suit. No 5-1 of 1945 was dismissed for default. The result being in favour of Govt the result may be recorded by a G.R.

2/9

48. Is the copy of the Judgment necessary?

12a
4/5

~~A.A.~~

Special Suit No.51 of 1945.

In the Court of the Civil Judge, Senior Divisio
Dharwar.

Plaintiff:- Venkatrao Vithalrao Heblikar, age about 29, caste Brahmin, occupation land lord, residence Hebli, Dharwar Taluka.

Versus.

Defendant:- 1. The Government of Bombay (Through the Collector of Dharwar).

2. Krishnarao Vithalrao Heblikar, age about [illegible], caste Brahmin, occupation Jahagirdar residence Hebli, Dharwar Taluka.

Value of the claim:- Rs.[illegible]827/ 8/-

The plaintiff above named begs to submit the following:-

1). That the properties mentioned in the schedule annexed to the plaint originally formed part of the 22½ mars of Kadim watan assigned to the service of Patils, Kulkarnis and Nadgirs of Hebli village on payment of fixed judi to the Government.

2). That in the early part of the eighteenth century as these Watandars committed default in payment of Judi all the 22½ mars of this Kadim watan was taken possession of by the then Government for temporary management.

3). That at the time of the grant of Hebli village to the ancestors of the plaintiff in about 1748, the temporary management of the watan property was also entrusted to them. This property was described as Kamavishi in the accounts of the Heblikars to distinguish the same from the Sara jam.

4). This state of things continued upto the time of the Inam Commission which was set up under act 11 of

of 1852, Major Etheridge, as Allienation Officer and Inam Commissioner, inquired into the specific nature of this 200 mars of Kadim Watan and decided that only 7½ mars and 5 bhigas which had by then reverted to the Madgirs was alone amenable to settlement as held from Government. As Kamavishi management of the remaining 192½ mars had continued with the Heblikars without disturbance he held that it had assumed permanency of tenure which could not be justly ~~interfered~~ interfered with. He, therefore, recommended to the Government that the same should, therefore, belong to the Heblikars. The Government accepted this recommendation and changes were accordingly made in the records of the Government as well as in the private accounts of the Heblikars and the property was thereafter described as Khalsat instead of Kamavishi. These proceedings terminated in about 1865.

5). That since then the property has continued with the ancestors of the plaintiff as their private property, and in Spl. Suit No. 2 of 1913, which went to the Privy Council in Laxmanrao Vs. Secretary of State (29 Bom. L.R.1484) this fact has been affirmed.

6). That when the Saranjam was regranted to Vithalrao the father of plaintiff and defendant 2, in 1924, the suit property was treated as different from the Saranjam in G.R.P.D.No.922 dated 27-3-1924, and the said property was later partitioned between Vithalrao and his brother Madhavrao, though the management of the property continued with Vithalrao.

7). That after the death of Vithalrao on 2-5-1942, when the Saranjam was regranted to defendant No.2, by G.R.P.D.922 dated 2-8-1944, for the first time, the Government of Bombay included in the resumption the entire estate to Krishnarao treating the same as Saranjam.

8). The plaintiff also learns that the Government have even issued instructions to the Village Officers

37

of Hebli to make alterations in the Village Registers and remove the said property from watan category and include the same in the Saranjam and have notified the information on 30-10-1944.

9). The plaintiff begs to submit that G.R.P.D. 999 dated 2-8-1944, so far as it affects the suit property, is ultra vires, illegal and void, for the following among other grounds:-

a). That as the Government have consistently treated the suit property as watan for nearly two centuries and the plaintiff's title to the said property has been built upon that basis, it is not now competant to the Government to change its attitude and begin to treat it as Saranjam.

b). As the Government have admitted by their conduct and treatment of the estate in the past that the said property is watan they are now estopped from contending that the said property is Saranjam.

c). The Inam Commission has held this property to be the private property of the Heblikars and this decision was accepted and acted upon by the Government. They cannot at this distance of time attempt to ignore the same and reopen the question.

d). It is not competant to the Government to change the nature of the tenure so as to affect adversely the interests of the plaintiff without providing him an opportunity to place his case before the Government.

e). The nature of the property was specifically was raised in Laxmanrao Vs. Secretary of State (29 Bom. L.R.1484) and decided in favour of the plaintiff's father and the said decision is Res Judicata between the Government and the plaintiff.

f). As part of the 800 mars has been judicially recognised as watan, it is not competant to the

Government to treat another part of the same estate as Saranjam.

10). The cause of action arose on 2-8-1944 when CRP 923 dated 2-8-1944 was passed by the Government of Bombay and subsequently when instructions were issued to the village Officers of Hebli to make necessary alterations of the tenure in the Village Registers which was notified in Hebli village on 30-10-1944.

11). That though a notice dated 29-7-1945 as required under section 80 of the Civil Proceedure Code was served on the Government no attempt seems to have been ~~taken~~ made to cancel or alter the said Resolution. Hence the suit.

12). As the suit property is situate in Hebli, within the jurisdiction of the Hin'ble Court this Court is competent to ~~try~~ adjudicate upon the merits of the claim.

13). That the value of the claim for purposes of Jurisdiction and pleader's fee is Rs.5237-8-0, being the market value of plaintiff's share in the suit property. As plaintiff prays for seperate possession of his ½ share in the said property, he has paid Court fee on the share to which he is entitled.

14). That defendant 2 has agreed to partition the entire estate of late Vithalrao and give seperate possession of plaintiff's share in it, except the suit property which he claims as Saranjam. As the work of partitioning the other properties of the family is proceeding out of Court, the said claim is not included in the present suit. As the suit property has been declared to be Saranjam defendant 2 refused to give plaintiff his share and required him to establish his right to a share in the said property. Hence the suit.

15). The plaintiff submits that he is entitled to ½ share in the suit property as the said property was not divided between Vithalrao and his brother Sidh

Madhavrao, and the plaintiff is entitled to only ½ share in the property that fell to Vithalrao's share.

Therefore it is most respectfully prayed that this Hin'ble Court may be pleased to grant a decree -

a). declaring that the C.R.P.D.No.[illegible] dated 2-8-1944 as far as it affects the suit property and the subsequent instructions issued to the Village Officers of Hebli to effect alterations in the Village Registers, are ultra vires, illegal and void;

b). grant plaintiff seperate possession of ½ share in the suit property;

c). grant him future mesne profits from date of suit till possession of his share is given to him;

d). grant him costs of the suit with such further or other relief that this Hin'ble Court may deem fit to grant in view of the peculiar circumstances of the case.

Dharwar.
1-10-1945.

Sd/- V.V.Heblikar.

I, Venkatrao Vithalrao Heblikar, the plaintiff above named, do on solemn affirmation declare that what is stated above is true to the best of my knowledge, information and belief.

Sd/- V.V.Heblikar.

Dharwar.
1-10-1945.

Sd/- Krishnaswami,
pl.
Sd/- R.R.Nadgir,
pleader.

Examined and particulars ordered to be entered in the Register of suits.

1/10/45. Sd/- x x x
Clerk of the Court.

Order

Order

Issue summons to defts for S.I.

Returnable on 24-11-1945.

Sd/- x x x x

25-10-1945. C.J.S.D.

Schedule

Vatan lands of Hebli village that were in the possession of Vithalrao:-

S.Nos.	Area.	Market value.
232.	42-19-	Rs.4050-0-0.
664.	7- 6.	" 300-0-0.
298.	18-24.	" 2200-0-0.
299.	17-14.	" 2000-0-0.
545.	24-20.	" 3000-0-0.
288.	8-28.	" 1000-0-0.
300.	12-25.	" 1600-0-0.
295.	29-29.	" 3600-0-0.
567.	7-14.	" 900-0-0.
292.	16- 6.	" 2000-0-0.
10 S.Nos.	184-35.	total value "21350-0-0.

Plff's ¼ share in the property is Rs.5337-8-0

Sd/- V.V.Heblikar.

Sd/- Krishnaswamy pl.

Plaintiff is absent. His pleader says at Ex. 42 that he has no instructions.

Order.

The suit is dismissed. The plff shall pay 1/4 of one set of legal ~~ex~~ costs to deft No.1 and anothe to deft No.2 and he shall bear his own.

Sd/- C.J.S.D.
22-3-1947.

41 G. F.

Bill of costs.

Plaintiff.		Deft No.1		Deft No.2	
1.Stamp for plaint.	Rs.281-4-0.	1.Stamp for Vakalat	Rs. ----	1.Stamp for Vakalat	Rs. 0-10-0
2.do for Vakalat	" 0-10-0.	2.do for applications Exs.35,36,37,38,39 and 40...	Rs. 3-12-0	2.Pleader's fees 1/4th o Rs.5[illegible]7-8-0	Rs. 49-3-0
3.Pl's fees on Rs. 5327-8-0	" 196-12-0.	3.Pleader's fees on Rs. 5337-8-0	Rs. 49- 3-0		
4.Process fees.	15-[illegible]-0.				
Total.	Rs.[illegible]93/10/-	Total	Rs.52/15/-	Total	Rs. 49/13/-

Given under my hand and seal of the Court this 22nd day of March 1947.

Sd/- x x x
Karkun.

Sd/- x x x x
Civil Judge, S.D.,
26-3-1947.

Suits.
Dharwar.

For a declaration that Government Resolution, Political and Services Department, No.923, dated 2nd August 1944 relating to Hebli Saranjam in so far as it affects the suit properties is illegal and ultra vires.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 9347
Bombay Castle, 4th October 1948.

Read Government Resolution, Legal Department, No. 4116-A dated the 1-6-1948.

Letter from the District Government Pleader, Dharwar, No. 896, dated the 27.8.1948, stating that the suit noted in the margin was decided by the Civil Judge, Senior Divisior Dharwar, on 22.3.1947, when the following order was passed :-

In the Court of the Civil Judge, Senior Division, Dharwar.
Special Suit No. 51 of 1945.

Venkatrao Vithalrao Heblikar .. Plaintiff
versus
The Province of Bombay ..... Defendant

"The suit is dismissed. The plaintiff shall pay one set of legal costs to defendant No.1 and another set to defendant No.2 and he shall bear his own."

Letter from the District Government Pleader, Dharwar, No. 965, dated the 22nd September 1948, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,
Original R. M. Mehta
R. M. MEHTA
Assistant Secretary to Government.

To
The Political and Services Department,
The Commissioner Southern Division,
The Collector of Dharwar.

Issued
COP
11/10

Subd to sign
Orders at P28
7BKC
1.X.

From

V.N.Lokur
M.A.LL.B.
Advocate.

BOMBAY
18th Oct. 1949.

To

The Legal Remembrancer

to Government of Bombay.

Re : High Court First Appeal

Nos 37 and 38 of 1948.

(In suit No 40 of 1945 of
Dharwar, C.J.S.D.Court).

Sir,

I am instructed by my clients the respondents in the appeals mentioned above to bring about a compromise in the appeals mentioned above.

The following terms are suggested.

(1) Plaintiff's suit dismissed.

(2) Defendants to pay Plaintiff's costs throughout.

Kindly treat this as urgent.

Yours faithfully.

V.N. Lokur

Advocate for Respdts

Please call for a copy of the judgment of the lower court in these suits. There was only one judgment delivered in both so I presume a C.C. may be sufficient - a C.C. by

Rs -

18/10

IN THE COURT OF THE CIVIL JUDGE S. D., D H A R W A R.

AT Dharwar.

Special Civil Suit No. 39 of 1945. Exh. 98.

Shrinivas Laxmanrao Heblikar, caste brahmin, age about 25, occupation Landlord, Residence Hebli, Taluka Dharwar. ..... Plaintiff.

Against.

The Government of Bombay (through the Collector of Dharwar). .... Defendant.

Claim Rs.200/- for jurisdiction Rs. 81800.

The plff sues to declare that the G.R.P.D.No. 923 dated 2-8-1944 does not affect that the watan part of his estate and to declare that the subsequent instructions issued to the village officers of Hebli to effect alterations in the village Registers are ultra vires, illegal and void; to declare that the said Resolution and subsequent instructions issued to the village officers cannot affect the suit property and to get costs of the suit.

2. He states that the properties mentioned in schedules A and B orginally formed part of 200 mars of Kadim watan lands assigned for the services of Patils and Kulkarnis and Nadgirs of Hebli village on payment of fixed judi to Government; that in the early part of the eighteenth contrary, these watandars committed default in payment of judi and therefore, this land was taken possession of by the then Government for temporary management; that at the time of the grant of the Hebli village to the ancestors of the plff in about 1748, the temporary management of the watan property was also entrusted to them and this property was described as Kama-wish in the accounts of the Heblikars to distinguish the same from the Saranjam and this continued till the Inam Commission and Major Etheridge was appointed Alienation Officer and Inam Commissioner to inquire into the specific nature of 200 mars of Kadim Watan and he decided that only 7¾ mars and 3 bighas which had then reverted to the Nadgirs was alone amenable to settlement as held from Govt ment; that as Kama-wishi management of the remaining property had continued with the Heblikars without disturbance, he held that it had assumed permancy of tenure which could not be justly inter-

ferred with and he recommended to Government that the same should thereafter belong to Heblikars and Government accepted this recommendation and changes were accordingly made in the records of the Government as well as in the private accounts of the Heblikars and the property was thereafter described as Khalasat instead of Kamawishi and these proceedings terminated in about 1865; that thereafter some of them Nadgirs filed Civil Suit No.83 of 1868 in this Court for possession of about 200 mars out of this estate and the same was decreed and the High Court of Bombay confirmed the same in Civil Appeal No.3 of 1876 on the ground thatupto a period within 12 years of the suit the property had continued to be Watan; that relying on this decision, some of the members of the Nadgirs family filed civil suit no.353 against the Heblikars for possession of a part of the Watan and this claim was thrown out on the ground that though the claim of the Watandars in suit no.83 of 1868 was in time it was not so in 1904 and this decision was confirmed by the High Court in Civil Appeal no.184 of 1907; that in the meanwhile, Act 3 of 1874 was passed and some of the watandars moved the Revenue Authorities for framing watan Register for Hebli and to determine the representative watandars and after a protracted inquiry, Government issued G.R.No.10129 of 1908 and they held that the watandars were entitled to the watan and an order was passed that their means should be entered as representative watandars and the Heblikars who were in possession of the watan property were required to contribute towards remuneration of the officers; that when in pursuance of this Resolution contribution was levied from Saranjamdar Laxmanrao the father of the plff, he filed Civil Suit No.2 of 1913 in the District Court of Dharwar against the Secretary of State and the Nadgirs for a declaration that the Heblikars had become watandars by adverse possession and that 100 mars of his share had become his absolute private and was not therefore liable to contribute towards theremuneration of the officers; that the suit was taken up to the Privy Council in 29 Bom.L.R. 1484 and that Court upheld all his contentions and declared that these lands were not liable to pay contribution and that money that had been recovered from him as contribution was ordered to be paid back to him; that Laxmanrao continued in possession of the property an absolute owner till his death in 1936 and thereafter the Saranjam was resumed and

re-granted to Madhavrao by G.R.No. 923 of 1938 and this property wasnot touched and the plff and his brother Madhavrao were left in un-disturbed possession as owners; thatat the partition between Madhavrao and plff in 1940, the lands mentioned in schedule A were allotted to plff's share and the lands in schedule B and other property were given to the mother of the plff during her lifetime and the property in schedule B is to revert to plff after her death; that after the death of Sardar Vithalrao, his Saranjam was resumed and re-granted to his eldest son Krishnarao by G.R.No.923 of 1944 and therein the Government of Bombay for the first time included in the resumption even the Indian watan part of the estate which had gone to the share of that branch in the family partition and re-granted the entire estate to Krishnarao; that though this resolution was presumably passed to dispose of the share of the late Sardar Vithalrao only, the Government of Bombay are now seek-ing to extend the application of this G.R. to the property in possession and enjoyment of the plff though he was not a party to the said resolution and he had no opportunity to show cause against the said resolution before it was passed; that he learnt that the Government issued instructions to the village officers to make alterations in the village Registers on 30-10-44; that the plff submits that the G.R. so far as it affects the suit property is ultra vires, illegal and void for the grounds given below; that as the Government have consistently treated the suit property as watan for nearly 200 years and the plff's title to the said pro-perty has been built upon that basis, it is not now competent to the Government to change its attitude and begin to treat it as Saranjam; that as the Government have admitted by their conduct and treatment of the estate in the past that the said property is watan, they are noe estopped from contending that the said property is Saranjam; that the Inam Commissioner has held this property to be the private property of Keblikars and this decision was accepted by Government and they cannot attempt to ignore the same and re-open the question; that it is not competent to the Government to change the nature of the tenure so as to affect adversely the interests of the plff without providing him an oppo-rtunity to place his case before the Government; that the High

Court of Bombay and Privy Council have held that a part of 200 mars of Kadim watan to be watan property and the property in possession of the plff as ~~x~~ as watan property was acquired by adverse possession and it is not competent to the Government to ignore the decision of the judiciary; that as the nature of the suit property was specifically raised in Laxmanrao Vs. Secretary of State 29 Bom.L.R. 1484 and decided in favour of the plff's father the said decision is res-judicata between the Government and the plff, that a notice as required by law was also served on the Government.

3. The deft states at Exh. 53 that the plff's title to the suit property is denied and he states that suit properties formed part of the Hebli Saranjam resumable at the pleasure of Government and they are neither watan nor the private property of the plff; that the 200 mars were held on watan tenure on payment of judi by the Nadgirs of Hebli prior to the Saranjam grant of the village of Hebli, but the judi of the lands fell in arrears and therefore possession of the same was taken by the then Government in about 1723 and in 1748, the whole village of Hebli including the 200 mars of land was granted in Saranjam to the then Jahagirdars; that therefore, the deft submits that the suit Lands forming part of 200 mars excepting the lands taken possession of by Nadgirs are Saranjam and they are neither watan nor private property of Jahagirdars; that in 1858, the Inam Commissioner decided that 7% mars and 3 bighas were kadim watan and the remaining 192 and off mars belonged to the Jahagirdars and the decision in Inam Commission was confirmed by Government and this decision was construed by judicial decisions to mean that the 192 and odd mars are neither watan nor private property of either the Jahagirdars or the Nadgirs but formed part of Hebli Saranjam; that it is denied that Government is estopped from treating the suit land as Saranjam; that in 1908 there was Government Resolution which construed the Inam Commissioner's report of the year 1865 as deciding the 192 mars to be watan and ordered remuneration of the X the village officers of Hebli to be levied from Sardar Laxmanrao; that Laxmanrao was dis-satisfied and he filed Civil Suit No.2 of 1913 against the Government and the Nadgirs and the High Court held that the 120 mars were watan and Government following that ruling passed the resolution of 1924 holding that the kadim Patilki Kulkarniki and Nadgir lands were not to be resumed and the grantees were to be entitled only to the Mamula judi and ordered 200 mars to be entered

in watan Register; that the decision of the High Court was reversed by Privy Council who held that the Watan Act was not applicable to 200 mars which were not consequently liable for the remuneration of the officers; that there was subsequently another litigation between Sardar Vithalrao and Laxmanrao for recovery of judi in respect of the part of 200 mars of land and the High Court held that the 200 mars of land in Hebli aware really part of Saranjam grant of Hebli and in doing so, they considered the effect of the previous decisions of the Privy Council wherein the Sanad granted to the Jahagirdars and the decision of the Indian Commissioner were construed and the orders passed by Government no longer survive in view of these authoritative decisions; that Government was not a party to High Court Appeal No. 3 of 1876 or to suit of 1904 and he is therefore, not bound by the decision therein; that Government are not bound by any private arrangement or compromise between the Jahagirdars and the Nadgirs under which it is alleged that either of them got or retained possession of the suit lands; that Government is similarly not bound by the partition of 200 mars of land effected by the Jahagirdars in their family; that in the circumstances stated above, the lands in suit are Saranjam lands and G.R. of 1944 is legal and valid and binding upon all the parties concerned and the allegations in the plaint are incorrect and they are not admitted; that Government is not estopped from declaring that the suit property to be Saranjam as alleged in the plaint or to resume the same at their pleasure; that the deft denies that the decision in High Court Appeal No.3 of 1876 and (29 Bom.L.R. 1484 and 43 Bom. L.R. 1484 and 43 Bom.L.R.232) operate as Res-judicata as alleged, that the suit is barred under sec.4 of the Bombay Revenue Jurisdiction Act; that the deft denies the allegations in the plaint regarding the manner of the enjoyment of the suit property and the plffs have no proprietory rights in the suit lands and their rights to enjoy are subject to the Saranjam rules and general power of Government in respect of Saranjam and to the restrictions to be imposed by Government and the allegations made in the plaint regarding right of ownership over suit lands are denied.

4. On these pleadings the following issues were raised at

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1. Whether the suit property is a Saranjam tenure or whether it is watan property or private property ?

2. Whether the deft by his conduct or admissions is estopped from contending that the suit lands are of a Saranjam character ?

3. Whether the decisions in High Court Appeal No. 3 of 1876, 29 Bom. L.R. 1484 and 43 Bom. L. R. 232 operate as Res-judicata to the contentions raised by the deft ?

4. Whether the suit is barred under Sec. 4 of the Revenue Jurisdiction Act ?

5. Whether Resolution of G.R.P.D. No. 923 dated 2-8-1484 affects the suit property ?

6. Are the plffs entitled to the declaration sought ?

7. What order ?

Answwers :- 1. The property is Saranjam property.

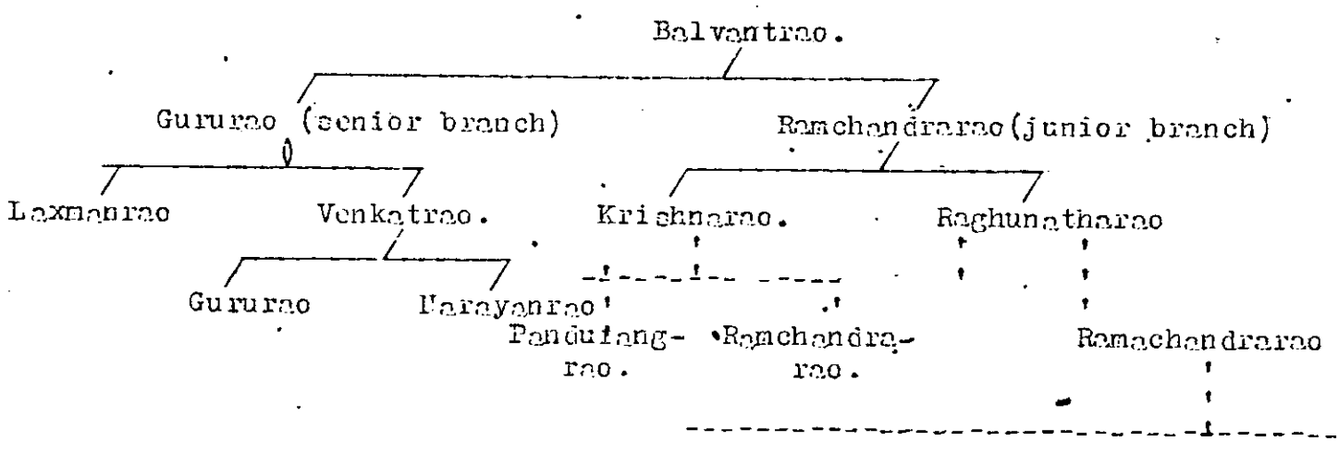
2. No. 3. No. 4. Yes. 5. Yes. 6. No.7. As given below.

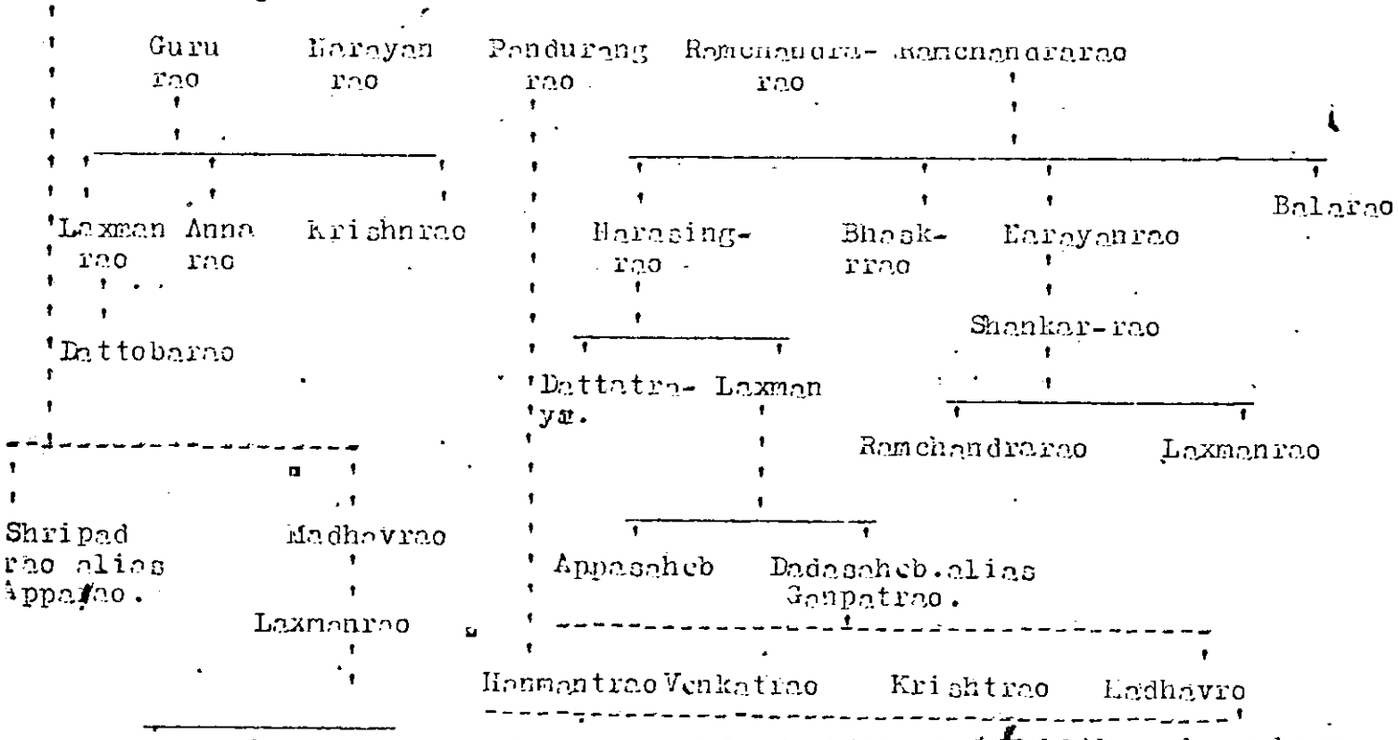
Reasons.

5. Special Suits Nos. 37 of 1945, 38 of 1945, 39 of 1945, 40/1945 and Long Cause Suit No. 299 of 1946 are treated as companion with the consent of the parties and the evidence is recorded in special suit no.39 of 1945. Plffs in Spl. suits nos.37 of 1945 and 40 of 1945 are Nadgirs and plffs in Spl. suits nos. 38 of 1945 and 39 of 1945 are Heblikars and one Venkatesh Narasinha Talawai is the plff in L.C. Suit No.299 of 1946. In all the special suits, the deft is the Government and in L.C. suit no. 299 of 1946, the defts are the Government of Bombay and one Sheshagirirao Madhavrao Heblikar. In all the five suits, it is stated for plffs that the properties mentioned therein are parts of 200 mars of land originally given to the Nadgirs of Hebli for Patilki, Kulkarniki and Nadgir rights and as they failed to pay the judi regarding the same, the then Government took over the lands for management about the year 1723 and they were given to the Heblikar Jahagirdars for management in the year 1748 along with the grant of the Saranjam of Hebli. The sanad is at Exh. 72A and a translation regarding the same is at Exh.89. The plffs in the four special suits have stated that Government passed G.R. No.923 dated 2-8-44 (Ex.79) relating to the property held by Sardar Vithalrao and by that G.R. they held that the portion of 200 mars which

was of the 4th share of the branch of Vithalrao was resumed and possession was taken from persons other than the heirs of Vithalrao and that the property was granted to Krishnarao Vithalrao. It is further stated that although no orders were passed by Government regarding other portions of 200 mars, the Collector of Dharwar applied the G.R. to the remaining portion out of 200 mars and passed orders to treat that as "Saranjam" property. The plff in L.C.S.No. 299 of 1946 has stated that Government passed G.R. on 7-9-45 by which the Saranjam held by the late Madhavrao Heblikar was resumed and was regranted to Sheshagirirao and that the plff had obtained the property as a gift for services rendered to the late Jahagirdar and that he was dis-possessed and therefore, he has filed the suit The contentions of all the plffs in these suits are that the orders were passed without hearing them and they have filed the suits for various reliefs stated by them. The Government has raised contentions stating that the property was Saranjam property and therefore, the Government had a right to resume the same and that the suit was barred under Sec. 4 of the Revenue Jurisdiction Act. The plffs have stated that the contentions of the defts are barred by Res-judicata in view of the decisions in High Court Appeal no.3 of 1876, 29 Bom.L.R. 1484 and 43 Bom.L.R.232. It is also stated that the Government was estopped by his conduct and admissions from contending that the suit lands were of Saranjam character. They have stated that the Government Resolutions passed do not affect the suit property and they have prayed for declarations and the plff in L.C.S. No.299/1946 has also prayed for possession of the suit property from the defts in that suit.

6. The genealogy of the family of Heblikars is at Exh.96 and it is as stated above :-





7. The history of 200 mars of land which the Heblikars have been holding since 1748 is necessary to be stated. It is given in Laxman Vs. Shrinivasrao (29 B.L.R. 1484) and in Exh.92. In the village of Hebli there were in former times the usual service watan of Patils, Kulkarnis and Nadgirs who held these 200 mars of watan lands in the village subject to the payment to Government of a Tixed judi. The same family had all the rights of Patilki, Kulkarniki and Nadgiriki. In the earlier part of the 18th century i.e. about the year 1723, the payment of judi fell in arrears and the ruling power who was the Nawab of Savanur entered into possession of these watan lands and treated them as Kama-wishi or under his management for the purpose of realising the arrears. This was the state of things when the Nawab of Savanur granted the village to the ancestor of the present Jahagirdars. The sanad is at exh.72A which is in Urdu and its English translation is at Exh.89. The relevant portion runs :- "We making up our mind to honour your gallant self have conferred upon you the said gallant gentleman the kasba of Havur Hebli together with the hamlet and watnhal and lands appertaining to zept (i.e. attached) ~~kxm~~ inams of Mukadams and Nadgirs and others in the district of Toragal by way of a perpetual inam exclusive of taxes relating to Ijrah, Mukhasa, and exclusive of Hakdars, and Inamdars and exempting Kulbah Kulkarniki". The Zept inams of Nadgirs referred to above are the 200 mars in respect of portions of which there is the present litigation.

8. These lands continued to be shown as Kamavishi in the accounts of the Heblikars and the High Court held in Civil Appeal No. 143 of 1929

III
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as quoted in Exh. 92" The utmost that can be said in favour of the Nadgirs is that their watan lands were not confiscated and that th voluntarily relinquished possession. Apparently, there was a desir on the part of the Jahagirdars to repatriate the watandars to thei former position. That seems to be consistent with the view that th were prepared to treat the Nadgirs with indulgence, in the matter of resumption of the lands if the arrears of judi were paid. Apparently, the Nadgirs were not satisfied with these terms and were attempting to regain their watan through the intervention of the Collector free from any obligation whatsoever. This continued till 1852 when Bombay Act 11 of 1852 came into force and Major Gordon wa appointed the Inam Commissioner to inquire into the claims to exemptions from the payment of Land Revenue. That Commissioner after inquiring into the claims of the Jahagirdars found that there was n Sarva Inam i.e. permanent revenue free / and that they were holders under the Saranjam tenure (Exh.82). According to plffs, Exh.82 related to all the property of Heblikars excepting 200 mars and tha regarding 200 mars there was an inquiry by Major Etheridge whose order is at Exh. 86. In Exh. 86, there are three items:- Serial Nos. 15,16 and 17 out of 21 items and the three items relate to 200 mars. It is stated there "These items (21) were all settled to be kadim ir 1862 by Major Etheridge". It is to be remarked however that the land rolls referred to in the para preceding, show that the Heblikars at the date of the acquisition of the village did not receive the items 15,16 and 17 averaging 200 mars as bona fide khalasat but as kamavishi though as it appears from an order dated 1792.....that the kamavishi management (the extent of which however is not specified) at that date still remained as before and as there is nothing to show that at any subsequent period even upto the present time it had altered with the exception of 7½ mars and 3 bighas which at some times unknown had reversed to the Nadgir, it may be allowed that the kamavishi management of the remaining 192½ mars and 6 bighas has assumed a permanancy of tenure which cannot justly be interfered with Under these circumstances, Major Etheridge would suggest.....the Nadgirs' land of 7½ mars and 3 bighas be alone made amenable to settlement as held from Government.....The remainder.....should belong to Heblikar". This recommendation of Major Etheridge was

apparently accepted by Government as would appear from the case of the Privy Council (29 Bom. L.R. at 1490). 192½ mars and 6 bighas continued to be in possession of the respective sharers among Heblikars after the decision of Major Etheridge. Exh. 86 is dated 12-11-1864. A direction (Exh. 88) was sent to Dharwar Taluka.

9. Thereafter it appears that about 22 mars of land out of this property was again restored to some of the Nadgirs as a result of a suit which was filed in the year 1868 and which went in appeal to the High Court in Appeal No. 3 of 1876. That case is reported in Printed Judgments 1877 p. 47. At page 55 of that ruling, it is stated "it is not clear that the Inam Commissioner arrived at the conclusion that the land was absolutely the property of the Jahagirdars. But even if such were his conclusion, the plff (Nadgir) is not bound by a decision made in an inquiry to which he was not a party and the object of which was simply to settle the respective rights of the Government and the Jahagirdars. From the above evidence, we think that it is sufficiently established that upto a period within 12 years of the institution of the present suit the possession of the defts was not adverse to the plff. The land was not shown in the accounts as khalasat but as kamawishi and this entry under a suspense heading indicates that the land was not treated as having absolutely lapsed to the Jahagirdars but that a right of redemption by the Patelswas considered to be still existing". The High Court held that the claim was not barred by limitation and that the plff was entitled to the restoration of the lands mentioned in the plaint upon payment of the amount which on a settlement of accounts may be found to be due to the defts on account of judi.

10. The Privy Council case (29 B.L.R. 1484) shows that the decision of Major Etheridge was deemed to be binding not only on Government and the Saramdars Heblikars but also on the Nadgirs. One Bisto Shankar Nadgir filed the suit against Ramchandra Raghunath. Ramchandra died and his sons were brought on record as his heirs.

11. Plffs in Spl Civil Suits Nos. 37/1945 and 40 of 1945 are Nadgirs and those in Spl. Suits Nos. 38 and 39 are Heblikars and in the L. C. suit No. 299/1946 there is one Venkatesh Narasinha Talwai who was a servant of one of the Heblikars who gifted the property in that suit to him for past services and Exhs. 25 and 26 in that suit are documents relating to

the gift. All these suits are against the Provincial Government of Bombay and in L.C. suit No.299/46, Sheshgirirao Madhavrao Heblikar is added as deft no.2. The Sanad (Exhs. 72A and 89) shows that the grant to Heblikars was made in 1748 before the advent of British Rule. According to plffs, the Sanad consists of 2 parts (1) Hebli village with the Hamlet and Vatnhal (2) lands appertaining to zept (attached) Inams of Mukadams and Nadgirs of about 200 mars. Out of 200 mars, 7¼ and 3 bighas had gone out of the family of Heblikars before 1819 and that land was in possession of some of the Nadgirs. British Government was established in this part of the country in about 1820. The Government pleader for the Provincial Government of Bombay wants to read the Sanad (Exhs. 72 and 89) as a whole and it is stated by him that the entire property mentioned therein was Saranjam and he says that the property cannot be divided into two - one portion as Saranjam and the other portion as watan proper or private property of Heblikars. Before Major Gordon, the Heblikars were saying that the first part of the property in the sanad (Exs. 72 to 89) was Sarva-inam. Major Gordon decided by Exh. 82 dated 31-7-1858 that there was no sarva-inam. There was no inquiry regarding 200 mars then and Major Etheridge was appointed to inquire into kadim inams and exh. 86 shows that he dealt with 200 mars and they are at items nos.15 to 17. From 1948 to 1864 the Heblikars treated the property of 200 mars excepting 7¼ mars and 3 bighas as kanavishi.

12. It is stated for plffs in Spl Civil suit No.37/45 that their ancestors approached Madhavrao one of the Jahagirdars after the decisions reported in 1877 P.J. p.47 and that he gave them about 5% mars of land and that they were in possession of them since then and that the Jahagirdars lost about 34 mars of land in all and that they never claimed these properties.

13. Government framed Saranjam rules in 1898. In 1858, Major Gordon said that the rules would be applied when they were framed Ex.82). It took about 40 years for Government to frame rules. Till 1898, the Watan, Saranjam and other property of Heblikars were all treated alike and these were divided and sub-divided without any distinction. There were 3 main Jahagirdars - one of 8 annas, the other of 4 Annas and the third of 4 annas. Under the various parti-

tions, the several Jahagirdars came to be in separate possession of some portions of the Saranjam property as also portions of 200 mars. of watan property excepting about 34 mars. This continued till 1898 when Government issued the Saranjam rules and the practice began of resuming Saranjam property on the death of the Saranjamdar and regranting the same to such person as the Government thought fit. Pandurangrao one of the Heblikars died in 1899. In pursuance of rules framed in 1898, Government resumed all the property of the deceased Pandurangrao including his share in 200 mars which was formerly watan property.

14. The bhaubands in possession of various shares of both Saranjam and watan property raised an objection to the resumption and regrant. On 30-1-1900, Government issued G.R. No.786 of 1900 (Exh.74). Government found Chidambrao the heir of Pandurangro unfit to hold the Jahagir and ordered the Collector of Dharwar to submit a full report regarding a fit person to succeed Pandurangrao. Thereafter, there was a G.R. No.3835 dated 25-5-1901 granting the Jahagir to another. This was cancelled by G.R.No. 2436 dated 12-4-1904 and it was ordered X that the property of Pandurangrao be attached and managed by the Collector of Dharwar with a view to its being eventually regranted to Vithalrao son of Chidambarao. The bhaubands objected to the regrant of the Saranjam to Sardar V.C.Heblikar (Vide page 11 of Exh.92). They accordingly filed a suit in the year 1911 (No.1 of 1911) against the Secretary of State contending that Government had no right to resume and regrant the Saranjam after Pandurangrao's death, first to Narasingrao and then to Vithalrao's ~~xxxxxx~~ and then to Vithalrao. There was a decision of the High Court in Gururao Vs. Secretary of State (19 B.L.R.117). This was reversed in Secretary of State Vs. Laxmibai (25 B.L.R.527) and it was held that bhaubands had no right to possession. Privy Council did not decide directly the character of 200 mars of land. As a result of this decision of the Privy Council, Government ultimately granted the whole of the Saranjam property to Sardar Vithalrao Chidambarrao Heblikar in one case and Sardar L.N.Heblikar in another case.

15. This decision of the Privy Council did not directly decide the character of the 200 mars of land and there was another series of litigation. As a result of the passing of the Bombay Hereditary offices Act by Acy 3 of 1874 the Revenue Authorities began to prepare watan Register of Hebli Patils, Kulkarnis and Nadgirs. This preparation of watan Register continued for a period of 15 years. The Commissioner held by his order of

the year 1907 that under the watan Act it was imperative for the Collector to determine who were to be representative watandars and register their names without waiting indefinitely until one or other of the rival claimants to the office of the watandars procured a decision of the civil court and he directed that the Nadgirs should be shown to be the watandars as decided by High court in First Appeal No. 3 of 1876. The X Commissioner upheld the Collector's decision in determining members of the Nadgir family to be representative watandars. He was also of the opinion that the whole of the watan lands should be entered as such in the watan Register - 80 mars for the Patilki watan and 40 mars for the Kulkarniki watan as shown in Major Etheridge's letter of 9-1-1865 but that it would not be necessary for the watan from the Jahagirdars in possession more than that was required for the endowment of the officiators under the watan Act. This order was confirmed by Government in 1908 and in 1913 some money was sought to be recovered under the Act from the Saranjamdars as emolument payable to the representative watandars. Thereupon, Sardar Laxmanrao Heblikar ½ sharer in the Saranjam filed Civil Suit No.2 of 1913 in this Court for the recovery of the amount paid by him and for a declaration that he and defts 12 and 13 that is the branches represented by Sardar V.C.Heblikar and L.N.Heblikar should be declared as watandar Patils and Kulkarnis by reason of the grant of 1748 and if not by reason of long and exclusive possession and enjoyment until 1908. He further sought for an order that the watan Register should be cancelled after declaration that 120 mars of land entered into Watan Register were not watan property and were not liable to contribution. In the First Appeal which is reported in 24 Bom. L.R. 214, the High Court held that the manner in which the watan lands were treated both by Government and the Jahagirdars showed that the lands had not become the absolute property of the Jahagirdars, that the Jahagirdars could not acquire the offices of Patils and Kulkarnis by adverse possession and that assuming that the Nadgir defts were entitled either by an agreement or by custom to get back their watan land on payment of judi time would not begin to run against them until they were

made aware that the Jahagirdars were setting up a title tohold the watan lands in their own right and there was nothing to show that the Nadgirs were aware of any alterations in the method of keeping the village accounts. As a result, Government passed Resolution No. 923 of 1924 Against the decision of the High Court, appeal was filed to the Privy Council which is reported in 29 Bom.L.R. 1484. It was held there that the lands in question were not liable to pay contribution for the remuneration of the officiators. Their Lordships expressed their view at page 1456 "In these circumstances, Theur Lordships say that there is no sufficient reason to differ from the District Judge's conclusions that the effect of the decision was to render the suit lands in the hands of the plff and defts 12 and 13 not liable to contribution under Act 3 of 1874". When this decision was given in the year 1927, some of the Sardars ceased to recover judi from the bhaubands in possession of the lands. There was then spl. suit no. 34 of 1924 in this court. It was held by the then - First Class Sub Judge that the Saranjamdars were in possession of the watan lands as trustees for the plffs in that suit and that the - trustees for the plffs in that suit and that the trustees had never openly asserted their hostile title to the knowledge of the plff and that the plff's claim was not barred by limitation. He also found that having entered into possession on certain terms, the Jahagirdars were estopped from denying or setting up an adverse title and the matter would have been different if the plffs had made an offer to pay judi and there was a refusal to accept the same. After this decision, the Jahagirdars again began to recover judi from the plffs in that suit. Thereafter Civil Suit No.475/32 was filed in this court for a declaratio that the defts had no right to recover judi and for an injunction restra ning them from collecting the same in future. The defts in that suit - stated that so long as the judgment in Spl. suit no. 34/1924 stood they were entitled to recover judi from persons in possession of those watan lands. The judgment in spl. suit no. 34/1924 was reversed by the High Court in First Appeal no.143/1929 and it was held that there has not been any kind of trust of these lands in the hands of Heblikars and the Nadgirs' suit for recovery of those lands was dismissed by the High Court.

16. Government passed Resolution no. 923 dated 2-8-1944 (Exh. 79) after the death of Sardar Vithalrao who was ¼th sharer in the Hebli Saranjam. It is stated there "Government is pleased to direct that the quarter share of the Hebli Saranjam which was held by the late Sardar V. Chidambarao should be resumed and regranted free of encumbrances to the deceased Saranjamdars' elder son Mr.Krishnarao Vithalrao with effect from the date of death of the late Saranjamdar that is from 2-5-1942 and subject to the orders in paras 2 to 5 below". It is further stated there "In view of the Privy Council's decision (in Laxmanrao Vs. Shrinivasrao) the watan lands referred to in para 4 of Government Resolution no.923 of 27-3-1924 are no longer watan lands with the exception of 7¼ mars and 3 bighas comprised in the enclosed statement A". It is stated by the plffs in the four special suits that although they had no interest in the ¼th share of Saranjam belonging to Sardar Vithalrao, the Government had promulgated orders to apply this G.R. to portions of 200 mars in their possession and therefore they have filed the suits to declare that the G.R.P.D.No.923 of 2-8-1944 was ultra vires, illegal and void so far as it affected the watan part of the estate and the subsequent instructions issued to the village officers of Hebli to effect alterations in the village registers were also ultra vires, illegal and void. They also pray for declaration that the G.R. and subsequent instructions do not effect the suit properties in their possession. L.C. suit no. 299 of 1946 refers to G.R.No.923 dated 7-9-1945. That Resolution (Exh.80) states "Government is pleased to direct that the 8 annas share of the - Hebli Saranjam which was held by the late Mr. Madhavrao Laxmanrao Heblikar should be resumed and regranted free of all encumbrances to the deceased Saranjamdar's son Master Sheshgirirao with effect from the date of the death of the late Saranjamdar. As however Master Sheshgirirao is a minor, his estate should be attached and placed under Government management under rule 5A of the Saranjam Rules till in the opinion of Government Master Sheshgirirao is fit to be entrusted with the estate". In para 5 sub clause (4) the land gifted to the plff by gift deed of the year 1936 is mentioned. In that connection, it is stated in that Resolution "On the analogy of the orders in para 4 of Government Resolution P.D.No.923 dated

2-8-1944, Government is pleased to direct that the 84 survey numbers mentioned in sub para 1 to 4 should be transferred from the watan to the Saranjam category. In consequence, the lands at sub paras 3 and 4 should be resumed and held under Government management for eventual regrant with the rest of the estate". It is the grievance of the plffs in all these suits that they were not heard before the orders in these G.Rs. (Exs. 79 and 80) were applied to them. G.R. of 1945 (Exh.80) was issued by Government after the four special suits were filed. In 1946 Government passed a G.R. regarding the remaining sharer in Hebli Saranjam (Ex.90).

17. Issue no.1:- The statement of Venkatesh (Exh.72), plff no. 6 in Spl. suit no. 37 of 1935 is recorded for the plffs and the defts has adduced no oral evidence. The plffs in the Spl. suits have stated that the G.R.P.D. of 1944 and the subsequent instructions issued to the village officers of Hebli to change the village registers are ultra vires, illegal and void and they say that these do not affect the suit property. The plff in Civil suit no.299 of 1946 has stated that the G.R. of the year 1945 is not binding onhim and he claims possession of the property in that suit. It is admitted that the 200 mars of land was originally assigned to Patils, Kulkarnis and Nadgirs of Hebli and that they were kadim inam. All these offices were held by the family of Nadgirs and they were topay a fixed judi to Government. The land assigned to them on Patils was 80 mars, that assigned to them as Kulkarnis was 40 mars and that assigned to them as Nadgirs was 80 mars. Before the year 1723, they failed to pay the judi of these lands and therefore, the then Government took possession of the property for temporary management to recoupe arrears of judi and they were styled as Zept lands. In the year 1748, the village Hebli and the other property was granted in Inam to the Heblikars and along with that property it was stated in the Sanad that the Zept lands of 200 mars was also given to them. This is stated in the sanad. The Heblikars showed the property as Kamawishi in their accounts and this continued till the decision of Major Etheridge in about 1863. Some Nadgirs filed Civil Suit No.83 of 1868 in this court for possession of about 22 mars and there was a decree and it was confirmed in Civil Appeal No. 3 of 1876 by the High Court which held that upto a period within 12 years of the suit, the property had continued to be watan and therefore, the Nadgirs were entitled to possession. One of the descen-

dants in that suit is the plff in spl. suit no. 39 of 1945. The plffs in spl. suit no. 37 of 1935 say that after the decision in civil suit no. 83 of 1868 and the decision in the High Court appeal, their ancestors approached Madhavrao Heblikar one of the Sardars, and by private arrangement with him, they got 5¼ mars of land. There is no document about it. The evidence shows that plffs are in possession of these lands since long. The plffs say that the sanad exs. 72A and 89 consists of two parts - the first of the Hebli village with the hamlet and Vatnhal and the second consists of 200 mars of land appertaining to zept (attached) Inams of Mukadams and Nadgirs. They say that the first part was only Saranjam and that the second part was not Saranjam. According to plffs, in Spl. suits nos. 38 of 1945 and 39 of 1945 these 200 mars were the private property of the Jahagirdars and according to plffs in Spl. suitsnos. 37 of 1945 and 40 of 1945, the property still retains the character of watan as it was originally watan and that although it was with others for sometime they got it back and therefore it does not lose its watan character as it is with them who are watandars. Before the year 1819 a strip of 5¼ mars and 3 bighas out of the 200 mars had gone out of the family of Heblikars. This was before the establishment of the British rule in this part of the country about the year 1820. Major Gordon was appointed the Inam Commissioner and he made an inquiry regarding the Saranjam property (Ex.82). Major Etheridge was appointed the Inam Commissioner or regarding the kadim Inams and his decision is at Exh.86. Serial nos.15,16 and 17 out of the properties mentioned therein are the 200 mars in question. He found "there is nothing to show that at any subsequent period even upto the present time it had altered with the exception of 7¼ mars and 3 bighas which at some time had reverted to the Nadgirs. It may be allowed that the Kamavishi management of the remaining 192¾ mars and 6 bighas has assumed a permancy of tenure which cannot justly be interferred with". He found that only 7¼ mars and 3 bighas out of 200 mars was alone amenable to settlement as held from Government that the remainder should belong to Heblikars. Thereafter, the Heblikars began to show

in their accounts the portion of 200 mars that was with them as Khalasat. After the decision of Major Etheridge, a direction was sent by the Commissioner to Dharwar taluka as seen from Exh.88. By that 7¼ mars and 3 bighas were shown as amenable to settlement as held from Government and the rest was shown as belonging to Heblikars. Thereafter, there was a suit by one of the Nadgirs in this court and it went to High X court in xxxxx civil appeal no. 3 of 1876 reported in Printed Judgments 1877 page 47. It was held there that the possession of the Jahagirdars was not adverse against Nadgirs and the plff in that suit got a decree for 22 mars ofland and the plff in spl. suit no. 40 of 1945 is a descendant and he is in possession of about 22 mars by virtue of the decision which was given about 70 years ago. After the decision, the ancestors of the plffs in spl. suit no.37 of 1945 approached Madhavrao one of the Jahagirdars and he gave about 5¼ mars to them. Therefore, the Jahagirdars lost about 34 mars and they never laid xx claim to these properties. Other Nadgirs filed suits in the year 1904 and their suits were dismissed and it was held that the suits were barred by limitation. From the year 1748 to 1864 the land of 200 mars was treated as Kamavishi by the Jahagirdars and thereafter they were treated as Khalasat. Government passed G.R. of 1908 claiming some money as remuneration of the officiators watandars and one Laxmanrao one of the Jahagirdars filed a suit against Government, Nadgirs and defts 12 and 13 who were the other Sardars who had ¼th share in the Saranjam. Laxmanrao was the owner of ½ share. The position taken by Government in that suit is seen from Exh. 43 which is a copy of the written statement. In paras 9 and 12, they stated that the property was treated as watan since a long time and that the 200 mars were kadim inams and were given as remuneration to Patils, Kulkarnis and Nadgirs. Issues in that suit are to be found in 29 Bom. L. R. 1484 at page 1486. Issue no. 13 therein was "Is the land in suit (120 mars) watan property"?. The District Judge found in favour of Laxmanrao.At page 1493, Their Lordships have stated "On the merits, the District Judge was of opinion that the decision of Governor-in-Council confirming the recommendation of Major Etheridge was binding on the parties and entitle he plff to hold the suit lands free of assessment and they had ceased to be watan lands and were not liable to contribution for the remunera X

ation of the officiators under the Act". At page 1495 they say "According to the view taken by the District Judge from which Their Lordships see no reason to differ. there was in this case an adjudi cation under Act 11 of 1852 securing the Revenue of the suit lands of the Jahagirdars and if this be so, it has been pointed out by Sir George Lowndis that Act 3 of 1874 under which the contribution was levied only extends to this village so far as its provisions may not conflict with the terms on which any such alienated village may have been secured to its proprietors. In these circumstances, Their Lordships see no sufficient reason to differ from the District Judge's conclusions that the effect of the decision was to render the suit lands ih the hands of the plff and defts 12 and 13 not liable to contribution under Act 3 of 1874". They declared that the suit lands in possession of the plff are not liable to contribution under Act 3 of 1874 and they ordered refund of the contribution sued for. Till G.R. of the year 1944, Government was saying that the property was watan property and they now say that the property is Saranjam property and that they were entitled to resume the same and and this stand of Government is inconsistent with their stand from the Commissioner. A number of G.Rs. were issued by Government from time to time and copies of some of them are produced in the case at exhs. 74m, 75, 81, 77 and 78. After the decision of the case in 29 Bom.L.R. the amount of costs was recovered from Government and the Government filed a suit for contribution against some of the defts in the Privy Council case. This case is Ramabai Vs. Government of Bombay reported in A.I.R. 1941 Bom. 1944 - 43 Bom. L.R.232. Ramabai is one of the plffs in spl. suit no. 37 of 1945. It was held in that case that the watan property was not to be regarded as property inherited by the son so as to expose it to X liability to execution under section 53 of the Civil Procedure Code. It was incidentally admitted by Government that the property which was a portion of 200 mars was watan property and the claim against deft no.3 in that suit was dismissed as he held the property not from his father. The plffs rely on these rulings - the first the High Court Appeal No. 3 of 1876, the second of the Privy Council in 29 Bom. L. R. 1484 and the third of the High Court in 43 Bom. L. R. 232 to show that the pro-

perty of the Jahagirdars and that the property was the watan property of the Nadgirs and that the property was the watan property of the Nadgirs who are in possession and who are parties to spl. suits nos. 37/45 and 40/45. In exh. 77 which is G.R. of 1924 it is stated by Government in para 4 the Governor-in-Council agrees with the Commissioner that the kadim Patilki, Kulkarniki and Nadgir lands are not to be resumed and regranted to the two grantees who are entitled only to the right of Mamula judi. This grant should be regranted along with the other Saranjam property". This G.R. was issued after the Privy Council decision in 25 Bombay L. R. 527 reversing 19 Bom.L.R.117. The case reported is Laxmibai Vs. Secretary of State. The Privy Council held that the property in that suit was Saranjam property and was a grant of the soil and the Government's right of resumption cannot be questioned in civil courts. The G.R. of 1924 (ex.77) was issued after the decision of the Privy Council but inspite thereof they did not resume portions of 200 mars. If Government wanted to hold 200 mars as Saranjam it is stated for plffs that there was no necessity of saying that the lands were watan property in exh.77. Laxmanrao of the senior branch died in 1936 and there was a G.R. in 1938 (exh.78). In this resolution also the lands are not resumed by Government and no reference is made to 200 mars. That portion of 200 mars which was the senior branch was not taken possessionof by Government in 1938. Madhavrao the son of Laxmanrao of the senior branch died in 1943. Before his death, he partitioned property out of 200 mars which was with him. Exs. 5 to 45 in spl. suit no.39 of 1945 show the property allotted to Shrinivasrao. After the death of Madhavrao, the portion with him was not resumed by Government although Saranjam property was resumed. Shrinivasrao Chidambrao died and there was a resumption and regrant in 1944 to his son and the Government for the first time made up its mind to treat the property as Saranjam in G.R. of 1944. According to the plffs, the property which was once watan cannot change its character by the mere order of the executive. They say that after the decision in Civil Appeal no.3 of 1876. Government mentioned the property in watan Registers and therefore, they knew what the decisionin that case was and that they were not ignorant of it. In 1864, and 1876 according to plffs, the property was watan property and therefore in the year 1748 at the time of the grant, the property must be watan property and it cannot be Saranjam

property. In 29 Bom.L.R. 1484, the nature of the 200 mars was settled There was no question in that case according to plffs as to whether the property was Saranjam or not and there was no issue to that effect. All the necessary persons Nadgirs. Jahagirdars and Government were parties to that suit and therefore that decision according to plffs is the only one between all the parties during the last 200 years or so and therefore, that decision alone is binding on all parties if not the decisions in Civil Appeal No. 3 of 1876 and in 43 Bom.L.R. According to plffs, it was held in 29 Bom.L.R.1484 that the property was originally watan and it ceased to be watan by the order of the Inam Commission or and therefore, these lands were not liable to pay contribution. The suit related to 120 of kadim watan and not to any other property of Heblikars. According to plffs, the property thereafter by the order of the Inam Commissioner. According to them, it is no where stated in any of the judgments that the property was Saranjam property and no party said that the property was Saranjam proper and that there was no issue to that affect in any of the proceedings filed before the present suits. In 43 Bom.L.R. 232 Government have not said that the property was Saranjam property. They could have contended in that manner and there would have been a decision. Exh. 42 in Spl. suit no.37 of 1945 shows that the amount due from one of the judgment-debtors was written of after the decision is 43 Bom.L.R. The suit was for contribution by Government against the Nadgirs. The Jahagirdars in 29 Bom.L.R. recovered their costs from Government and Government therefore filed the suit for contribution. According to plffs, in spl. suits nos.37/45 and 40/45, the property that went into possession of kadim Inamdars - the Nadgirs in the present case is watan property by a right of adverse possession as against Government and Heblikars. In the case in 29 Bom. L. R. the Nadgir land amounting to 80 mars was not in dispute and the rest which was about 120 mars was in dispute and that related to Patils and Kulkarnis. All the three branches of Heblikars were represented in that suit. There were all the branches of Nadgirs. Government was also represented there. In that suit, the defence that the property was Saranjam was open to Government, according to plffs, and they did not take

that contention and therefore, the suit is barred under Sec.11 of the Civil Procedure Code. The defts rely on the case reported in 25 Bom. L. R. 527 and in the decision in second appeal no. 586 of 1937 (Exh. 73).

18. At first the Heblikars divided all property. In 1898, Saranjam rules were framed and till then partition was effected in all the properties. According to plffs, there was no resumption from 1748 to 1900 and there was the first resumption order in 1899 when Pandurangrao representing ¼ share died. According to plffs, all the property watan and non watan was divided among all the sharers equally till 1898. After 1898, there was resumption of all the property in the branch of Pandurangrao and his grand-son Vithalrao got the property. As he was a minor, Government resumed the property and took X over the management under Saranjam Rules. All his property whether Saranjam watan or non-watan was taken possession of by Government. Several applications were made by members of Vithalrao's family from 1904 to 1915. Gururao son of Shrinivasrao who was the sonof Pandurangrao filed civil suit no.1 of 1911 in the District Court of Dharwar against the Secretary of State only. Gururao was the only plff and Secretary of State was the only deft. He stated that all the property was partible and Government said it was Saranjam. This suit was taken to Privy Council and it is reported in 25 Bom. L. R. 527. There was no question of 200 mars raised in that suit. In that case, all the property was mixed up and this was not the case according to plffs with other sharers. The Privy Council decided that the property was Saranjam and not Sarwainamand that it was a grant of the soil and not a grant of revenue only. The Privy Council did not decide specifically that 200 mars were Saranjam property. According to plffs, the conduct of Government after the decision of that case is important. Theother persons who were necessary were not parties to that litigation. The nature of 200 mars was not specifically raised and decided. It is also stated that if the decision is held to be binding against the suit property, no heir or successor of Gururao is a party to any of the five suits and therefore that decision is binding on Gururao and his heirs and not on others. It is also stated by plffs that they were not given an opportunity to have their say and therefore the G.Rs. cannot be made applicable to them. The case in the Privy Council was decided on 8-12-1932 and Government passed G.R. of 1924

(Exh.77) and Government stated that the property was watan property. They did not say that it was Saranjam property. The plffs say that if according to Government the property was Saranjam, para 4 of Exh.77 would not be necessary and therefore the 200 mars was something different from Saranjam X property.

19. L. N. Heblikar made an application to the Collector to get back the property with Ganapatrao. Exh. 45 in Spl. Suit No. 38 of 1945 is the copy of the order by the Commissioner. He held that the onus of proving that the lands in question were not watan lands lay on L.N. Heblikar. According to the Commissioner, the presumption was that the lands were watan lands and the burden was on Laxmanrao to prove that they were not watan lands. Exh. 46 is a copy of the order passed by the Commissioner. The Commissioner refused to ... over possession to Laxmanrao from Ganapatrao and he asked Laxmanrao to go to Civil Court. Laxmanrao approached the Government. Exh. 47 shows that Laxmanrao stated that the property was Saranjam. Government confined itself to the order of the Commissioner said asked Laxmanrao to file a suit. Laxmanrao Government thought that 200 mars were not included in the Privy Council case reported in 25 Bom. L.R. and according to plffs, Government's conduct was consistent with their previous conduct. As regards Exh. 73, it is seen that the Saranjamdars were entitled to Kamula Judi as per para 4 of Exh. 77. Narssingarao died in 1915 and his son was Laxmanrao. His property was resumed by Government. After the decision in 25 Bom.L.R. Government passed G.R. (Ex.77) and asked parties to pay Kamula judi. Till 1918, some persons paid judi to Jahagirdars. This was regarding non-Saranjamdar Heblikars. After the decision in 1927, the non-Saranjamdar was not liable to pay judi, they were also not liable. There were five suits in all. The non-Saranjamdars did not want to pay judi. In that case the Khatedar said that the question whether property was Saranjam or not was not material (Ex.92 page 24). This was in the trial court but in appeal that point was argued. It is stated for plffs that there was no

issue regarding Saranjam raised in the trial court that the Government was a party to the suit and that there was no contention raised that the property was Saranjam. It is stated for plffs that there are a number of mistake in Exh. 73. Plffs in Spl suit No.38/1945 were parties to Exh.73. Plffs in Spl Suits Nos. 37/45, 39/45 and 40/45 were not parties to that suit. According to plffs, if Gordon settlement applied to 200 mans, there was Saranjam but they say that the matter was not settled by Major Gordon but that there was a separate Inam Commissioner appointed and he was Mr. Etheridge. Therefore, they say that the two properties in the Sanad Exh.89 are different and therefore, there was no Saranjam.

20. The plffs say that the Sanad should be read in two parts and it would show that the first part of the property was Saranjam and the second part Kadim Inam. They also say that there were two inquiries one regarding Saranjam by Major Gordon and the other by Major Etheridge regarding kadim Inam. They say that the G.R. of 1924 deals with two sets of properties and that even in the G.R. of 1944 Government did not say that there was Saranjam grant in 1944.

21. The defts have stated that the Sanad should be read as a whole and that would show that the entire property issue and that this is also clear from the fact that the entire grant was made for military purposes and that in Saranjam properties the Saranjamdar cannot acquire private rights during the continuance of the Saranjam. According to deft, if the property was not Saranjam. According to deft, if the property was not Saranjam in 1748 it became Saranjam in 1864 and the right to redeem which was vested in the Nadgirs and which they lost was merged in the higher rights of Heblikars as Saranjamdars. According to deft if the property is held to be Saranjam there would be no question of adverse possession. They say that the Government had the Nadgirs and Jahagirdars were under a mistake of fact regarding the tenure of the property and therefore, there is no estoppel and that Government followed the judicial pronouncements from time to time and the various G.Rs. were issued. According to them, after the decision of Exh. 73 in 1939, resolutions of 1944 and 1945 were passed. They say that if the property is Saranjam, there is a bar of section 4 of the Revenue Jurisdiction Act.

22. If we look into the sanad (Ex.89), it is seen that it was given for military services. The grant was of the kasba of Havoor-Hebli together with the Hamlet and Vatnahal and lands appertaining to zept Inams of Mukadams and Nadgirs and others in the District of Torgal by way of perpetual Inam exclusive of taxes relating to Ijrah, Mukadams and exclusive of Hakdars and Inamdars and exempting Khulabab, Kulakanu. The plffs suggest that the sanad should be read into two :- The first part as Saranjam and the second part as private property by the Jahagirdars and as watan property by the Nadgirs. The sanad has to be read as a whole. The entire property mentioned therein was given to the Heblikars by one document. If they were in possession of that property, they would be Saranjam property. But if the lands appertaining to zept were taken back by the Nadgirs who were also Patils and Kulkarnis, those lands would be watan property in their hands. This is because the property was watan property before the grant of 1748 and it cannot change its character if the watandars get possession of the same. In the year 1876, 22 mars of land was obtained by a Nadgir in civil appeal no.3 of 1876 and plffs in spl. suit no. 40 of 1945 are in possession of that property by virtue of that decision and it is nearly 70 years since they are in possession. As regards the plffs in spl. suit no 37 of 1945, it is stated by them that after the decision of the High court stated above, their ancestor approached one Madhavrao and that he gave 5% mars of property to them and they were in possession of the same since then. The plffs in that suit are also Nadgirs and when X they are once in possession of that property, it seems to me that the property gets the character of watan property. This is so as they are in possession for more than 60 years. Till the G.R. of the year 1944, Government consistently stated that the entire 200 mars was watan property. They have changed their stand now and they have issued three G.Rs. one of 1944 and the other of 1945 and the third of 1946 (Exs.79,80 and 90). These relate to the three branches of the Heblikars - Saranjamdars. In Exh. 79 para 3, it is stated that the alienations made by the predecessor of the late Saranjamdar include Survey Nos.246 and 470. It was held that Survey No.470 was in continuous possession of the holder for more than 60 years and therefore, the right of Saranjam was now barred by adverse possessio

Therefore, Government levied full assessment and that was to be credited to Government. As regards Sur. No.246, it was held that it was of the Saranjam tenure and that as the present holder was not a member of the Saranjam family, full assessment was levied on it. In exh. 60 para 5 sub clause (5), the lands alienated to strangers there "the lands at no.5 having been alienated more than 60 years ago should be treated as lost to the Saranjam and assessed under section 45 of the Land Revenue Code, the assessment being credited to Government". Exh.90 para 3 sub clause (5) states that the lands in possession of Nadgirs. Regarding them, it is stated "the Nadgirs have been in continuous possession of those lands for more than 60 years. On the analogy of the orders issued in G.R. of 1944, these lands should be made liable to full assessment under section 45 of the Land Revenue Code the assessment being credited to Government". In the case decided by High Court in 1876 and reported in printed judgments 1877 page 47, Government was not a party but Government knew of the decision and changed the registers. In the case reported in 29 Bom.L.R. 1484, all the persons, Nadgirs Heblikars and Government were parties and the main question there was as to whether the property was watan property and it was held that it was not watan property. It was not stated by any of the parties that the land was Saranjam property and there was no issue about it and no decision specifically, although we find that they found that the 200 more was adjudicated under rule 10 schedule B of the Act 11 of 1852 which applied to Saranjam and Jahagirds. As the property was given by the Sanad Exh.89, it is Saranjam property in the house of Heblikars and it is watan property in the hands of Nadgirs. There is no evidence to prove that the property was the private property of the Jahagirdars. Whatever rights were obtained by Jahagirdars were from the Sanad (Exh.89). I, therefore, find accordingly on the issue.

23. Issue No.2:- Till the year 1944, the Government stated that the 200 mars were watan property. It is stated by the Government pleader that the G.R. of 1908 was the result of proceedings taken under watan Act and it is valueless, as it was decided in 29 Bom.L.R. 1484 that the provisions of the watan Act did not apply, that G.R. was wrong and that therefore the property was not watan property. It is further stated that the G.R. of 1924 was also valueless as it was on the basis of the decision in 24

Bom.L.R. 1484. It is stated that the contention of the Government that the property was watan was dis-allowed by the Privy Council and therefore, the G.Rs. of 1908 and 1924 do not survive. It is stated that the Government was bound by the decision in 29 Bom. L.R.1484 which held that the property ~~xx~~ was not watan and therefore, the Government was entitled to pass the G.Rs. of 1944, and 1946. It is stated that there was a mistake regarding tenure on the part, ~~X~~ of all the parties as Jahagirdars stated that it was their private property and Nadgirs and Government stated that it was watan property and that the contentions of Nadgirs and Government was dis-allowed in the decision in 29 Bom.L.R. 1484. It is stated that Government never represented the Jahagirdars that it was their private property. As regards the G.R. of 1938, it is stated that Government stated the property to be watan but it was so stated wrongly although there was a decision in 29 Bom.L.R. and therefore the settlement has no legal value and that this G.R. was cancelled by G.R. of 1945. The Government held that the Nadgirs were Patils and Kulkarnis. It was held in Exh.86 that 7¼ mars and 3 bighas had gone already out of the family of Heblikars and that it was amenable to settlement as kadim Inam. Similarly, the plff in the suit decided in printed judgments 1877 page 47 was a Nadgir and he got possession of 22 mars of land and his descendant is plff in spl. suit no. 40 of 1945. The ancestor of the plffs in spl. suit no. 37 of 1945 approached Madhavrao one of the Saranjamdars just after the decision in printed judgments 1877 page 47 and got 5¼ mars and they are in possession of the same thereafter. These persons are of Nadgir family and the Government recognised the properties in their possession as watan property. There has been a change in the position of Nadgirs by what Government stated. Therefore, Govt is estopped from saying that the properties in their possession are not watan properties. The matter is different in the case of plffs in spl. suit nos. 38 and 39 of 1945. The sanad exh. 89 comes in their way as they got the property by the sanad which showed that the property if it was to be in their possession was to be Saranjam property. This is because in addition to the village of Havoor-Hebli with the Hamlet and Watnhal the ~~X~~ lands appertaining to zept were given to them. If the lands were never redeemed that is, if the lands remained with

the Heblikars, they were to form part of the Saranjam, and if they were redeemed, they became part of the lands of the Nadgirs who were originally watandars and who have been since a long time recognised by the Government as watandars. Therefore, I find that the Government is estopped from contending that the suit lands are Saranjam as regards the Nadgirs and that they are not estopped regarding the Heblikars. I find accordingly on the issue.

24. Issue no.3:- It is stated by plffs that by the decisions in civil appeal no. 3 of 1876 and 43 Bom.L.R. 232 by the High Court and in 29 Bom.L.R. 1484 by the Privy Council, there is a bar of res-judicata to the contentions raised by the defts. The Government say that there is a bar of res-judicata to the contentions of the plff on account of the decisions in 25 Bom.L.R. 527 P.C. and the decision in 1939 (Ex.73). As stated in Exh. 73 by the learned Chief Justice, "The parties in the suit are members of the Heblikars family; a family which has been indulging in litigation in connection with the lands in dispute and other lands for the best part of 100 years. Four appeals have come up to this court and in two cases, the matter has been carried to the Privy Council and it is a fact to be noticed that in no case the appellate court upheld the judgment under appeal. That fact not only illustrates the complexity of the grounds involved but also has another significance because many Government Resolutions dealing with this land have been passed on a view of the land and their rights which has subsequently been held to be wrong and that circumstance adds very considerably to the confusion into which, the title of the lands in question has fallen". In High Court Appeal No. 3 of 1876, the Government was not a party. In the case in 29 Bom. L. R. 1484, all the parties were there but it was not stat there by Government that the property was Saranjam property. There was only the question as to whether the properties were watan property and this was necessary to find as to whether the properties were liable to contribution for the remuneration of the officiators and it was held that the properties were not watan and that they were not entitled to contribution for the remuneration of the officiators. If the properties were in possession of Heblikars, the question as raised would arise but if the property was in possession of the Nadgirs who were officiators, such a question would not arise. In the case 43 Bom.L.R.232, it was admitted

by Government that the property was watan. It was not necessary to decide as to whether the property was Saranjam or not. In the case reported in 25 Bom.L.R. Government and one Heblikar were parties. There was no question of Saranjam raised and decided by the trial Court and it appears that only in appeal the point was raised and decided. That decision would be binding on the actual parties to it and not to others. In Exh. 7 the only question was as to whether Judi could be recovered from the property and the other questions were incidentally decided. Therefore, I find that there were incidentally decided. Therefore, I find that there could not be a bar of res-judicata to the contentions raised by the deft. It is also seen that if the property is Saranjam in character; Government are entitled to resumption and they are entitled to raise that contention at the time.

25. Issue no.4:- As I have held that the property is Saranjam in the hands of Heblikars, there is a bar of section 4 of the Revenue Jurisdiction Act to plffs in spl. suits nos.38 of 1945 and 39 of 1945 and there is no such bar to the plffs in Spl. suits nos. 37 of 1945 and 40 of 1945 as the Nadgirs are in possession of the properties and they were originally watandars and the property with them is consistently treated as watan before the year 1944 by Government. As regards the plffs in L.C.Suit No.299 of 1946, he claims through a Saranjamdar by a gift deed of the year 1936 and Government have held that as the property is Saranjam held by Saranjamdar, the gift is not binding on the Saranjam and they have evicted the plff. To such a suit also, I find that there is a bar of section 4 of the Revenue Jurisdiction Act.

26. Issue No.5:- The question now arises as to whether the G.Rs. of 1944, 1945 and 1946 affect the suit property. As the property is held to be Saranjam in the hands of the Jahagirdars, the G.Rs. are binding on the properties in possession of Heblikars and not on the property with Nadgirs who are plffs in Spl. suits nos. 37/1945 and 40/1945.

27. Issue No.6:- In view of the findings on the above issues, it is seen that the plffs in Spl. suits nos. 37 of 1945 and 40 of 1945 are entitled to the declaration as sought and the plffs in the other

three suits nos. 38/1945, 39/1945 and L.C. suit No.299 of 1946 are not entitled to the declaration sought.

28. In L.C. Suit No.299/1946, it is stated that the plff served the Saranjamdar Laxmanrao and on account of services rendered, the suit property was given as a gift to him by a gift deed of 1936 and that he was in possession of the same and that Sardar Laxmanrao and his sons Madhavrao and Shrinivasrao executed the gift and put him in possession and that he was dis-possessed after the G.R. of 1945. He says that the G.R. is not binding on him. But as the property is Saranjam, Government is entitled to resume the same. I, therefore, find that the gift is proved but it is not valid and binding on the defendant and that the plaintiff is not the owner of the property and that the G.R. of 1945 is not ultra vires, and illegal and that the plff in that suit is not entitled to the declaration sought and that he is not entitled to possession.

O r d e r.

The suit is dismissed. The plff shall pay the costs of the deft and he shall bear his own.

13-10-1947. Sd. B.A.Chaugule,

Civil Judge, S. Division.

Legal Dept. 77

This relates to High Court First Appeal Nos.37 and 38 of 1948 filed by Government from adverse decisions in Dharwar Civil suits Nos.37 and 40 of 1945. This suit is ~~common~~ along with suits Nos.38, 39 and 51 filed in respect of certain Patils, Kulkarnis and Nadgirs in the village of Hebli in Dharward district. The defence of the suit was sanctioned on the lines of the brief accompanying Government Resolution, Legal Dept. No.4116 A dated 1.6.1946 which exhaustively deals with the facts and points of law involved in this suit. The plaintiffs in suits Nos.37 and 40 were members of the original Nadgir Watan family while in suits Nos.38,39 and 51 the plaintiffs were members of different branches of the Hebli Saranjam family. Suits Nos.38,39 and 51 were dismissed and the plaintiffs have gone in appeal. Suits Nos.37 and 40 filed by the Nadgirs have been decreed in their favour and against this decision Government has filed appeals Nos.37 and 38 in the High Court which are still pending.

2. Mr.V.N.Lokur, advocate for the respondents in these appeals has now proposed a compromise in his letter dated 18.10.49. He suggests that his clients would agree to the taking of ~~the~~ a consent decree, that the suits be dismissed and further that the defendant viz. Government should pay the plaintiffs costs throughout. I have discussed this case with Mr.Lokur and he has told me that his clients are anxious to settle this matter in this way with a view to ending this litigation. Since the respondents have won in the lower court Government would be well-advised to agree to ~~continue~~ lower consent decree for the ~~disposal~~ dismissal of the

suits. As regards costs, since plaintiffs have won in the lower court they may perhaps be paid their costs in the lower court as well as their costs in the High Court which may notuamount to much since they are respondents.

R L A Air Secretary

In view of the impending legislation to abolish all Imam leaves it appears that this application is made. Even on merits Govt appears to have a good case. Govt may however accept the offer subject to the usual condition that parties should bear their own costs.

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IN HIS MAJESTY'S HIGH COURT OF JUDICATURE AT BOMBAY.

First Appeal No.47 of 1948.

Shriniwasrao Laxmanrao Heblikar of Hebli District Dharwar. . . . .) Appellant. (Orig.plaintiff)

Versus

1. The Province of Bombay. . . . . .Respondent Through the Collector of Dharwar.....(Orig.Deft).

Claim Rs. 200/- for Court fees
"81800/-for jurisdiction

The Appellant above-named begs to appeal against the decree of the Civil Judge Senior Division, Dharwar in Special Civil Suit No.39 of 1945, dated the 13th October 1947 on the following among other grounds:-

(1). The decision of the Lower Court is contrary to law and against the weight of evidence in the case.

(2). The Lower Court erred in dismissing the suit.

(3). The Lower Court erred in holding that the suit property is Saranjam property.

(4). The Lower Court ought to have held that the suit property was the absolute property of the plaintiff's family.

(5). That the evidence fully establishes that the property was the Watan property originally and it became private and absolute property of the Heblikars.

(6). The three Rulings viz the decision-s in High Court Appeal No.3 of 1876, the Privy Council Ruling in 29 Bombay Law Reporter 184 and the decision in 43 Bombay Law Reporter 232 have held that the suit property was the private property of the Heblikars. The said decisions are binding and operate as res judicata so far as the nature of the property is concerned.

(7). The Government Resolution of 1924 (Exhibit 77) in effect acknowledges the suit property as Watan property and not Saranjam property and their conduct in not ordering resumption thereof in 1938 showed that the suit property was

Hc 8 - 14 5
89

the absolute and private property of the plaintiff's family,

(8). The Government have never treated this property as Saranjam property and for the first time by a Government Resolution in 1944, the Government want to regard the property as Saranjam property. The Government Resolution is contrary to their own interpretation before and inconsistent with their own conduct.

(9). That on a proper construction of the Sanad Exh.89 the suit property would be Kadim Inam in respect of which there was an inquiry by Major Etheridge.

(10). Admittedly the suit property was the Watan property of the Hadgirs before the grant of 1748 and the grant of that year cannot alter the nature of the property and the further possession of the Hadgirs or Heblikars cannot be attributable to the Grant Exhibit 89.

(11). It is an error to hold that the suit property was given to Heblikars by the Sanad Exh 89; the property was already in the possession of the Heblikars prior to the grant of the Sanad and they held it adversely to the Hadgirs who were the holders of the suit lands as their watan property.

(12). That the trial Court ought to have held that the Government were estopped from contending that the suit lands were Saranjam property.

(13). Estoppel is not created by the judicial decisions but by conduct of parties and the conduct of Government all along showed that qua the plaintiff's family the suit property was not regarded as Saranjam property, Major Etheridge's decision and the conduct of the Government after the said decision clearly operates as estoppel against the Government and they cannot now contend that the property is Saranjam property.

(14). That in 1926 the Government admitted that the property was not Saranjam property and referred Sardar Laxmanrao to a suit for the determination of the nature of the suit property.

(15). That the trial Court ought to have held that by reason of the decisions as to the nature of the property in Civil Appeal

-157 1-75 83

Appeal No.3 of 1876, 43 Bombay Law Reporter 232 and 29 Bombay Law Reporter 1484, there was a bar of res-judicata to the contention raised by the Government.

(16). That the trial Court erred in holding that the suit was barred by the provisions of section 4 of the Revenue Jurisdiction Act.

(17). That the trial Court erred in holding that the Government Resolution of 1944,45 and 46 do not affect the suit property. The said resolutions are ultra vires and are of no effect.

(18). That the trial court should have granted the declaratio sought by the plaintiff.

(19). That the trial court erred in rejecting the plaintiff's application for amendment, claiming relief with regard to the Government resolutions of 1945 and 1946, The said resolutions affected the suit property directly and passed after the filing of the suit. The trial court should have therefore granted declarations with regard to the said Resolutions.

(20). The order as to costs is wrong.

Sd/.. For self and M. Krish
naswami.

Bombay. 16-1-1948. Advocates for Appellant.

155 Suits. 1185

Dharwar.

For a declaration that Government Resolution Political and Services Department, No.923, dated 2nd August 1944 relating to Hebli Saranjam in so far as it affects the suit properties is illegal and ultra vires.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 3004
Bombay Castle, 2nd ~~February~~ March 1950.

Read Government Resolution Legal Department, No.7571 dated 11th August 1948.

Endorsement from the Government Pleader, High Court, Bombay, No.638, dated the 14th February 1950. Forwarding copy of letter No.637 of even date addressed to the Collector of Dharwar and requesting sanction for the defence of the First Appeal No.47 of 1948 in the High Court, Bombay filed by the plaintiff in the suit noted in the margin.

In the Court of Civil Judge,
(Senior Division), Dharwar.
Special Suit No.38 of 1945.

Hanmantrao Ganpatrao Heblikar and three others. ---Plaintiffs.
Vs.
The Province of Bombay. --Defendant.

RESOLUTION:- Sanction is accorded to the defence of the First Appeal No.47 of 1948 in the High Court, Bombay, on the lines of the brief accompanying Government Resolution, Legal Department No.4116-A dated 1st June 1946 and the favourable grounds in the judgment of the Civil Judge Senior Division, Dharwar dated the 13th October 1947.

By order of the Governor of Bombay,

original

R.M.MEHTA
Assistant Secretary to Government

To
The Political And Services Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Government Pleader,
High Court, Bombay.

Issued 22-3-50

subject to Sign A-8
AE 11/3

submitted affid. name
file with Dept 4/46
Alien
8/3
Naval
8/3

Stowe 4/46
8/3

17 Suits. 89
Dharwar.

For a declaration that Government Resolution Political and Services Department, No. 923, dated 2nd August 1944 relating to Hebli Saranjam in so far as it affects the suit properties is illegal and ultra vires.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 4128.

Bombay Castle, 24th March 1950.

Read Government Resolution Legal Department No. 7571 dated 11th August 1948.

In the Court of Civil Judge, (Senior Division), Dharwar.	Letter from the Collector of Dharwar No.L.A.W 457 dated 21st February 1950
Special Suit No.39 of 1945.	
Shriniwasrao Lakshmanrao Heblikar--- Plaintiff.	
Vs.	
The Province of Bombay. -- Defendant.	

addressed to the Commissioner Southern Division Belgaum ~~regarding~~ requesting sanction to the defence of the Civil appeal No.47 of 1948 in the High Court Bombay filed by the plaintiff in the suit noted in the margin.

RESOLUTION : Sanction is accorded to the defence of the Civil Appeal No. 47 of 1948 in the High Court Bombay on the lines of the brief accompanying Government Resolution Legal Department No. 4116-A dated ~~18th June~~ 1st ~~July~~ June 1946 and the favourable grounds contained in the judgment of the Civil Judge, Senior Division Dharwar dated 13th October 1947.

By order of the Governor of Bombay,

original R M Mehta

R.M.MEHTA.
Assistant Secretary to Government.

To
The Political and Services Department,
The Commissioner, Southern Division,
The Collector of Dharwar,
The Government Pleader, High Court, Bombay.

Issued on 24/3.

KYK
22/3

Sent for sign 23/3 23/3

No. 5799 89 193

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 28th April 1950.

To

The Government Pleader,
High Court, Bombay.

Subject:- High Court First Appeals Nos.37 & 38 of 1948 in Dharwar Civil Suit No. 40 of 1945.

Sir,

With reference to the subject noted above, I have the honour to state that Government have decided to compromise the above mentioned appeals on the following terms :-

(i) Plaintiff's suit to be dismissed

(ii) Defendant to pay plaintiffs' cost in the trial court

(iii) Parties to bear their own costs in the court of appeal.

Your are, therefore, requested to take necessary action in the matter.

Yours faithfully,

For Remembrancer of Legal Affairs.

kam. 26.4.50.

Sulotè after issue
file in Dwr 4/46
Dol
1/5-
Mar
1/5-

S. Dwr 4/46
3/5

15/91 193

G. C. P.—(J) J 70-4000-5-50
G. O., L. D., No. 1193 dated 7-12-15
G. P. CAMBAY.

[Govt. Pl. H. C. Bom.—Spl. Form No. 2 e

L. D.
From 4 FEB 1951

No. 938 S. Dun 4/46

THE GOVERNMENT PLEADER, HIGH COURT

BOMBAY;

To The Remembrancer of Legal Affairs,
~~THE DISTRICT MAGISTRATE OF~~ Bombay.
~~THE COLLECTOR OF~~

Bombay, ...13th February..... 1951.

SIR,

Referring to.....G.R.L.D.....No.....3004.....

dated...2-3-1950.....195 , I have the honour to inform you that the Case noted in the margin was heard by the High Court on

First Appeal No.48/48 in C.S.38/45.
Hanmantrao Hablikar
-VS-
The Province of Bombay.

12-12-1950 when the following Order was passed:—

" The Court confirms the decree of the Lower Court and dismisses the appeal with costs. "

32-50
15-2-51

Your most obedient servant,

BG Gholap

for Government Pleader, High Court.

1-75
93

C. C. P.—(J) 3,70-4000-5-50
G. O. L. D. No. 1493 dated 7-12-15
G. BOMBAY.

[Govt. Pl. H. C. Bom.—Spl. Form No. 2 e

14 FEB 1951

No. 940

From

THE GOVERNMENT PLEADER, HIGH COURT

BOMBAY;

To The Remembrancer of Legal Affairs,
~~THE DISTRICT MAGISTRATE of~~ Bombay.
~~THE COLLECTOR of~~

Bombay, 13th February 1951.

SIR,

Referring to G.R.L.D. No. 4128

dated 24-3-1950 195 , I have the honour to inform you that the Case noted in the margin was heard by the High Court on 12-12-50 when the following Order was passed:—

First Appeal No.47/48 in C.S.39/45.
Shrinivasrao Laxmanrao Hablikar.
-VS-
The Province of Bombay.

" The Court confirms the decree of the Lower Court and dismisses the appeal with costs. "

Your most obedient servant,

BBShah

for Government Pleader, High Court.

3201
15-2-51

1/10 DCD

Please see the letters from the P.P. Highcourt.

The result may be recorded by S.A.S.

DE 17/2 Sol (Mott)

17/2

Resubt.

Copies of judgment & decree have not yet been rec'd.

The result may be recorded after their receipt. Till then this may be filed in S Dir 4/06

DE 27/2 A. Sol.

27.2

S Dhawan 4/06

27/-

K:750. Copying and comparing charges. Rs.as.ps. 0-6-0 Fol. 1
Paper charges. 0-0-3

Total Rs. 0-6-3

==========

Total Annas six and pies three only:

D. N. Gokarn.
Superintendent, Decree Department.
19-3-1951.

Typed by Mr.D.R.Gokarn
Examined by Mr. D.T.Patwardhan
Read by Mr. R.N.Halkar

Copy applied for on 19-12-50
Copy ready on 19-3-1951
Copy delivered on 6-4-1951
P. P.

Assistant Secretary

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the Case of :

1. Hanmantrao Ganpatrao Heblikar;

2. Krishnarao Ganpatrao Heblikar; 3.

Venkatrao Ganpatrao Heblikar; 4. Madhavrao

Ganpatrao Heblikar; Plaintiffs 2 to 4 by

the Holder of their Power of Attorney,

Plaintiff No.1. (Original Plaintiffs)...Appellants.

Versus.

1. The Province of Bombay, through the

Collector of Dharwar. (Original Defendant).Respondent.

being Appeal No. 48 of 1948 From Original Decree.
M/s. N.M.Hungund & Krishnaswamy,Advocates for Appellants
Mr. K.G.Datar for the Govt. Pleader for the Respondent.

Coram:- Rajadhyaksha and Vyas, JJ.

For the reasons stated in the judgment recorded in

First Appeal No. 37 of 1948, the Court confirms the

decree of the lower Court and dismisses the appeal

with costs.

12-12-50. Sd/- S. H. Belavadi

Deputy Registrar.

True Copy

For Deputy Registrar

The 19th day of March 1951.

Rs.as.ps.

K. 750. Copying & comparing charges. 4-8-0 Fols. 12
Paper charges. 0-0-9

Total Rs.... 4-8-9

Total Rupees four, annas eight and pies nine only.

Superintendent, Decree Department.
14-3-1951.

Typed by Mr.D.R.Gokarn
Examined by Mr. D.R.Gokarn
Read by Mr. B.P.Bhavsar

Copy applied for on 19-12-1950.
Copy ready on 14-3-1951.
Copy delivered on 6-4-1951.
Copy sent by

Assistant to Registrar

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED C.Y.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Tuesday the 12th day of December 1950.

Appeal No. 48 of 1948 From Original Decree.

1. Hanmantrao Ganpatrao Heblikar; 2.Krishnarao Ganpatrao Heblikar; 3. Venkatrao Ganpatrao Heblikar; 4. Madhavrao Ganpatrao Heblikar, Plaintiffs 2 to 4 by the Holder of their Power of Attorney, Plaintiff No.1.
(Original Plaintiffs).....Appellants.

Versus.

1. The Province of Bombay, through the Collector of Dharwar. (Original Defendant)..Respondent.

Claim Rs.200/- for court-fees.

Rs.20100/- for jurisdiction.

The Plaintiffs sued for a declaration the G.R.P.D. No. 928 dated 2nd August 1944 so far as it affects the watan part of the estate and the subsequent instructions issued to the village Officers of Hebli to effect alterations in the village Registers are ultra vires, illegal and void and the subsequent instructions to

the village Officers do not affect the suit property in the possession of the Plaintiffs.

The Special Original Suit No. 38 of 1945 was decided by the Civil Judge, S.D. Dharwar who dismissed it with costs.

An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Honourable Mr. Justice Bavdekar on the 19th day of March 1948.

The grounds of objection to the decision appealed against are :-

1. The decision of the lower Court is contrary to law and against evidence in the case.

2. The lower Court erred in dismissing the suit.

3. The lower Court erred in holding that the suit property is Saranjam property.

4. The lower Court ought to have held that the suit property was the absolute property of the Plaintiff's family.

5. That the evidence fully establishes that the property was the watan property originally and it became private and absolute property of the Heblikars.

6. The three Rulings viz. the decisions in High Court Appeal No. 3 of 1876, the Privy Council Ruling in 29 Bombay Law Reporter 184 and the decision in 43 Bombay Law Reporter 232 have held that the suit property was the private property of the Heblikars. The said decisions are binding and operate as res judicata so far as the nature of the property is concerned.

7. The Government Resolution of 1924 (Exhibit 77) in effect acknowledges the suit property as Watan Property and not Saranjam property and their conduct in not ordering resumption thereof in 1938 showed that the suit property was the absolute and private property of the Plaintiff's family.

8. The Governornment have never treated this property as Saranjam property and for the first time by a Government Resolution in 1944, the Government was to regard the property as Saranjam property. The Government Resolution is contrary to their own interpretation before and inconsistent with their own conduct.

9. That on a proper construction of the Sanad Exhibit 89 the suit property would be kadim Inam in respect of which there was an inquiry by Major Etheridge.

10. Admittedly the suit property was the Watan property of the Nadgirs before the grant of 1748 and the grant of that year cannot alter the nature of the property and the further possession of the Nadgirs or Heblikars cannot be attributable to the Grant Exhibit 89.

11. It is an error to hold that the suit property was given to Heblikars by the Sanad Exhibit 89; the property was already in the possession of the Heblikars prior to the grant of the Sanad and they held it adversely to the Nadgirs who were the holders of the suit lands as their watan property.

HIGH COURT APPELLATE SIDE CERTIFIED COPY COMBAY

12. That the trial Court ought to have held that the Government were estopped from contending that the suit lands were saranjam property.

13. Estoppel is not created by the judicial decisions but by conduct of parties and the conduct of Government all along showed that quo the Plaintiff's family the suit property was not regarded as Saranjam property. Major Etheridge's decision and the conduct of the Government after the said decision clearly operates as estoppel against the Government and they cannot now contend that the property is Saranjam property.

14. That in 1926 the Government admitted that the propert was not Saranjam property and referred Sardar Laxmanrao to a suit for the determination of the nature of the suit - property.

15. That the trial Court to have held that by reason of the decisions as to the nature of the property in Civil Appeal No. 3 of 1876, 43 Bombay Law Reporter 232 and 29 Bombay Law Reporter 1484, there was of res-judicata to the contention raised by the Government.

16. That the trial Court erred in holding that the suit was barred by the provisions of section 4 of the Revenue Jurisdiction Act.

17. That the trial Court erred in holding that the Government resolutions of 1944, 45 and 46 do not affect the suit property. The said resolutions are ultra vires and are of no effect.

18. That the trial Court should have granted the declaration sought by the Plaintiff.

19. That the trial Court erred in rejecting the Plaintiff's application for amendment, claiming relief with regard to the Government resolutions of 1945 and 1946. The said resolutions affected the suit property directly and passed after the filing of the suit. The trial Court should have therefore granted declarations with regard to the said Resolutions.

20. The order as to costs is wrong.

Coram:- Rajadhyaksha and Vyas, JJ.

For the reasons stated in the judgment recorded in First Appeal No. 37 of 1948, the Court confirms the decree of the lower Court and dismisses the appeal with costs.

12th December 1950. Sd/- S. H. Belavadi

Deputy Registrar.

Bill of costs in the High Court :

By the Appellants:	Rs.as.ps.
Stamps for Memorandum of Appeal.	18-12-0
Stamps for copies of decrees and judgments.	1-14-0
Stamps for Vakalatnama.	2-8-0
Bhatta for Process.	5-0-0
Sectioner's Fee.	24-6-0
Advocate's Fee. "2 advocates' fee.	*781-0-0
Printing charges.	11-0-0
Copying charges for preparing paper-books.	4-13-0
Stamp for affidavit.	0-10-0
Total Rs..	849-15-0

By the Respondent :	Rs.as.ps.
Stamps for Vakalatnama. *G.P.appears.	*0-0-0
Advocate's Fee.	390-8-0
Translation Fee.	18-0-0
Copying Fee under Rule 111 of the High Court, Appellate Side,Rules,1936.	6-0-0
Total Rs..	414-8-0

(Seal)

Sd/- S.H.Belavadi

Deputy Registrar

The 12th day of December 1950.

True Copy

For Deputy Registrar

The 14th day of March, 1951.

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

Rs.as.ps.

K.751. Copying and comparing charges. 0-6-0 Fol. 4
Paper charges. 0-0-3

Total Rs.... 0-6-3

Total Rnnas six and pies three only.

Superintendent, Decree Department.
19-3-1951.

Typed by Mr.D.R.Gokarn
Examined by Mr. D.T. Paliwardhan
Read by Mr. R.H.Hatkar.

Copy applied for on 19-12-1950
Copy ready on 19-3-1951
Copy delivered on 6-4-1951
sent by V.P.P. on Book Post

Assistant Registrar

HIGH COURT OF APPELLATE SIDE CERTIFIED COPY BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the Case of :

Shriniwasrao Laxmanrao Heblikar

(Original Plaintiff).....Appellant.

Versus.

The Province of Bombay through the

Collector of Dharwar. (Original Deft).....Respondent.

being Appeal No. 47 of 1948 From Original Decree.

M/s.N.M.Hungund & Krishnaswamy & V.N. Lokur, Advocates for the Appellant.

Mr.K.G.Datar for the Govt. Pleader, for the Respondent.

Coram:-Rajadhyaksha and Vyas, JJ.

For the reasons stated in the judgment recorded in First Appeal No. 37 of 1948, the Court confirms the decr of the lower Court and dismisses the appeal with costs.

12-12-50.

Sd/- S. H. Belavadi
Deputy Registrar

True Copy

For Deputy Registrar

The 19th day of March, 1951.

K751

105

Typed by: B.P. Bhavsar. (Fols. 12)

Compared by: D.T. Paliwadkar

Read by: R.H. Karkar

Copying & comparing charges. Rs. 4. 8. 0.

Paper charges.. " 0. 0. 9.

Total Rs. 4. 8. 9

3/3/51.

Rupees four, annas eight and pies nine only.

Copy applied for on: 19-12-1950
Copy ready on 8-3-1951
Copy delivered on 6-4-1951

D.R. Nadkarni.
Superintendent,
Decree Department.
8/3/1951.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Tuesday the 12th day of December 1950.

APPEAL NO. 47 OF 1948 FROM ORIGINAL DECREE

Shriniwasrao Laxmanrao Heblikar
(Original Plaintiff) — Appellant;

versus

The Province of Bombay through the Collector of Dharwar.
(Original Defendant) — Respondent.

Claim - Rs. 200-0-0 for Court fees.
" 81800-0-0 for jurisdiction.

The Plaintiff sued for a declaration that G.R., P.D., No.923, dated 2nd August 1944, so far as it affects the Watan part of the estate and the subsequent instructions issued to the village officers of Hebli to effect alterations in the village registers are ultra vires, illegal and void and the subsequent instructions to the village officers, do not affect the suit property in the possession of the Plaintiff.

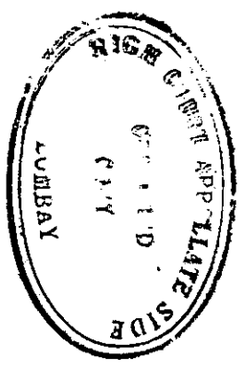
The Original Suit No. 39 of 1945 was decided by the Civil Judge, (Senior Division), of Dharwar who dismissed it with costs.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Honourable Mr. Justice Bavdekar on the 6th day of

10.Admittdly the suit property was the Watan property of the Nadgirs before the grant of 1748 and the grant of that year cannot alter thenature of the property and the further possession of the Nadgirs of Heblikars cannot be attributable to the grant, Exhibit 89.

11.It is an error to hold that the suit proerty was given to Heblikars by the Sanad, Exhibit 89, the property was already in the possession of the Heblikars prior to the grant of the Sanad and they held it adversely to the Nadgirs who were theholders of the suit lands as their Watan property.

12.That the trial Court ought to have held that the Government were estopped from contending that the suit lands were Saranjam property.



13.Estoppel is not created by the judicial decisions but by conduct of parties and the conduct of Government all along showed that the qua the Plaintiff's family the suit property was not regarded as Saranjam property, Major Etheridge's decision and the conduct of the Government after the said decision clearly operates as estoppel against the Government and they cannot now contend that the property is Saranjam property.

14.That in 1926, the Government admitted that the property was not Saranjam property and referred Sardar Laxmanrao to a suit for the determination of the nature of the suit property.

15.That the trial Court ought to have held that by reason of the decisions as to the nature of the property in Civil Appeal No.3 of 1876, 43 Bombay Law Reporter 232 and 29 Bombay Law Reporter 1484, there was a bar of res-judicata to the contention raised by the Government.

16.That the trial Court erred in holding that the suit was barred by the provisions of section 4 of the Revenue Jurisdiction Act.

17.That the trial Court erred in holding that the Government Resolutions of 1944, 1945 and 1946 do not affect

the suit property. The said resolutions are ultra vires and are of no effect.

18.That the trial Court should have granted the declaration sought by the Plaintiff.

19.That the trial Court erred in rejecting the Plaintiff's app ication for amendment, claiming relief with regard to the Government resolutions of 1945 and 1946. The said resolutions affected the suit property directly and passed after the filing of the suit. The trial Court should have, therefore, granted declarations with regard to the said resolutions.

20.The order as to costs is wrong.

Coram: Rajadhyaksha and Vyas, JJ.

For the reasons stated in the judgment recorded in First Appeal No. 37 of 1948, the Court confirms the decree of the lower Court and dismisses the appeal with costs.

Sd/- S.H.Belavadi.

12th December 1950. Deputy Registrar.

Bill of Costs in the High Court

By the Appellant	Rs.As.Ps.
Stamps for memorandum of application	18.12. 0.
Stamps for copies of decree and judgment	1.14. 0.
Stamps for vakalatnamas	5. 0. 0.
Bhatta for Process	5. 0. 0.
Sectioner's fee	58. 3. 0.
Advocate's fee (2 advocates fee)	1398. 0. 0.
Printing charges	11. 0. 0.
Copying charges for preparing paper-books	6. 6. 0.
Total	1504. 3. 0.

115
199

By the Respondent

	Rs. As. Ps.
Stamps for vakalatnama (G.P.Appears)	0. 0.0.
Advocate's fee	699. 0. 0.
Total	Rs. 699. 0. 0.

(Seal)

Sd/- S.H. Belavadi.

Deputy Registrar.

The 12th day of December 1950.

--

True copy

for Deputy Registrar.

The 8/1 day of March 1951.

		Rs.as.ps.		
K.748.	Copying and comparing charges.	0-12-0	Fols.	2
	Paper charges.	0-0-3		
	Total Rs...	0-12-3		

Total Annas twelve and pies three only.

Superintendent, Decree Department.
19-3-1951.

Typed by Mr.D.R.Gokarn
Examined by Mr. D.T.Paliwal
Read by Mr. R.H.Hatkar

Copy applied for on 18-12-1950
Copy ready on 19-3-1951
Copy delivered on 6-4-1951
Sent by V.P.P. Rs. Rs. Post

Assistant Superintendent

COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the Case of :

The Province of Bombay, through the

Collector, Dharwar (Original Defendant).....Appellant.

Versus.

Shripad Basavant Nadgir

(Original Plaintiff).....Respondent.

being Appeal No. 38 of 1948 From Original Decree

(With First Appeal No. 37 of 1948).

Mr. K. G. Datar for The Govt. Pleader for Appellant.
Mr. V. N. Lokur, Advocate for Respondent.

Coram : Rajadhyaksha and Vyas, JJ.

For the reasons stated in the judgment recorded in First Appeal No. 37 of 1948, the Court in terms of the compromise arrived at between the parties, sets aside, the decree of the lower Court and substitutes the follow -ing decree in its place.

(1) Plaintiff's suit is dismissed.

(2) The Defendant, the Govt. of Bombay shall pay the plaintiff's costs in the trial Court.

(3) The Parties shall bear their own costs of the appeal in the High Court.

12-12-1950.

Sd/- S. H. Belavadi.

Deputy Registrar.

True Copy

For Deputy Registrar,

The 19th day of March 1951.

K. 50 748 Rs.as.ps. 113

Copying and comparing charges. 1--8-0(Fs.4). Typed by Shri.D.P.Patwardhan.
paper charges. 0--0-3 Examined by:- D.K.Lulkarni
Read by:- B.P.Bhargav
Total Rs..1--8-3

Rupee one,annas eight and pies three only.

D.D. Madkarni
Superintendent,Decree Department
5-3-1951.

Copy applied for on 18-12-1950
Copy ready on 5-3-1951
Copy delivered on 6-4-1951
Sent by

Assistant Shorthand Writer

In the High Court of Judicature at Bombay.

Tuesday the 12th day of December 1950.

Appeal No. 38 of 1948 From Original Decree.
(With First Appeal No.37 of 1948).

The Province of Bombay,through the Collector Dharwar. (Original Defendant).. .. .. Appellant.
Versus
Shripad Basavant Nadgir (Original Plaintiff). .. Respondent.

Claim Rs. 200-0-0 for Court fees.
Rs.18,900-0-0 for Advocate's fees.

The Plaintiff sued for a declaration that G.R.P.D.No.923 of 2nd August 1944 is ultra vires,illegal and void so far as it affects the watan part of the estate shown in the suit is concerned.

The Special Original Suit No.40 of 1945 was decided by the Civil Judge (Senior Division) of Dharwar who decreed it and ordered the defendant to pay the plaintiff's costs.

An appeal has been admitted in the High Court from the decision of the lower Court.Notice was ordered to issue by the Hon'ble Mr.Justice Bavdekar on the 6th day of February 1948.

The grounds of objection to the decision appealed against are:-

1). That the learned Trial Judge should have held that the suit property was Saranjam property and not watan property.

2). That it was wrong to hold that Government was estopped fromcontending that the suit property was Saranjam property.

3). That the learned Trial Judge should have held that the sui was barred under section 4 of the Revenue Jurisdiction Act.

4). That the learned Trial Judge erred in holding that Govern--ment Resolutions did not affect the suit property.

5). That the decree is contrary to law and the weight of evidence on the record.

Coram:- Rajadhyaksha and Vyas JJ.

For the reasons stated in the judgment recorded in First Appeal No. 37 of 1948, the Court in terms of the compromise arri--ved at between the parties, sets aside the decree of the lower Court and substitutes the following decree in its place.

(1). Plaintiff's suit is ~~dmi~~ dismissed.
(2). The defendant, the Government of Bombay shall pay the plain--tiff's costs in the trial Court.
(3). The parties shall bear their own costs of the appeal in the High Court.

12th December 1950.

Sd/-S.H.Belavadi,
Deputy Registrar.

Bill of costs in the High Court,

By the Appellant:--

	Rs.as.ps.
Stamps for memorandum of appeal.	18-12-0
Stamps for copies of decree and Judgment.	1-14-0
Stamps for vakalatnama (Govt.Pleader appears).	0--0-0
Bhatta for process.	5--0-0
Sectioner's Fee.	13-11-0
Advocate's Fee (one fourth).	94-12-0
Printing charges.	11--0-0
Copying charges for preparing paper books.	4--8-0
Total Rs...	149--9-0

By the Respondent:--

	Rs.as.ps.
Stamps for vakalatnama	2--8-0
Advocate's fee (one fourth)..	94-12-0
Total Rs.	97--4-0

(SEAL)

Sd/-S.H.Belavadi
Deputy Registrar,
The 12th day of December 1950.

True Copy

For Deputy Registrar,

The 5th day of March 1951.

Copy ... 18-12-1950.
Copy ... 9-8-1951
Copy ... on 11-10-51
sent by ... Regd. Post on
Assistant Superintendent.

FIRST APPEAL No. 37 OF 1948 FROM ORIGINAL DECREE.

(WITH FIRST APPEALS NOS. 38, 47 and 48 of 1948).

The Province of Bombay, through the Collector, Dharwar. (Original Defendant) ... ... Appellant;

versus

Ramabai *kom* Shreeniwasrao Nadgir, and others. (Original Plaintiffs) ... Respondents.

Appeal against the decision of B. A. Chaugule, Esquire, Civil Judge (Senior Division), Dharwar, at Dharwar, in Special Suit No. 37 of 1945.

First Appeal No. 37 of 1948.

Mr. K. G. Datar, for the Government Pleader for the Appellant.
Mr. V. N. Lokur, Advocate for Respondents Nos. 1, 2 and 6.
Messrs. M. Krishnaswami and N. M. Hungund, Advocates for Respondents Nos. 3, 4 and 5.

First Appeal No. 38 of 1948.

Mr. K. G. Datar, for the Government Pleader for the Appellant.
Mr. V. N. Lokur, Advocate for Respondent.

First Appeal No. 47 of 1948.

Messrs. N. M. Hungund, M. Krishnaswami and V. N. Lokur, Advocates for the Appellant.
Mr. K. G. Datar, for the Government Pleader for the Respondent.

First Appeal No. 48 of 1948.

Messrs. N. M. Hungund and M. Krishnaswami, Advocates for the Appellant.
Mr. K. G. Datar, for the Government Pleader for the Respondent.

(CORAM: Rajadhyaksha and Vyas, JJ.).

12th December 1950.

Oral Judgment (per Rajadhyaksha, J.).—These four appeals carry a stage further a long course of litigation that has been going on with respect to the Heblikar's Saranjam in the District of Dharwar. When this matter came before this Court on the last occasion in Second Appeals Nos. 586, 587 and 592 of 1937, the learned Chief Justice observed that "the Heblikar family has been indulging in litigation in connection with the lands in dispute for the best part of hundred years. Four appeals have come up to this Court, and in two cases the matter has been carried to the Privy Council and it is a fact to be noticed that in no case has the appeal Court upheld the judgment under appeal. That fact not only illustrates the complexity of the questions involved, it also has another significance, because many Government Resolutions dealing with the land have been passed on a view of the law, and of their rights, which has subsequently been held to be wrong, and that circumstance adds very considerably to the confusion into which the title to the lands in question have fallen" As we are making a departure from the tradition in upholding the judgments of the lower Court in two out of these four appeals, we hope that this Court will not have any occasion to deal with the Heblikar Saranjam matters in the future. I find that I had, during this long course of litigation, myself to deal with some of the appeals as the District Judge of Dharwar. I, therefore, mentioned the matter to the learned advocates at the outset and informed them that, if they so chose, I should be quite willing to let these appeals go before another Bench. But, as the learned

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Superintendent, Decree Department. 9-8-1951.
Rs.As.Ps
Copying and Comparing charges. 36-0-0 (Fls.96)
Total Rs. 36-0-0
Total Rupees thirty-six only.

advocates had no objection to our hearing the appeals, and as I myself felt no embarrassment in hearing and deciding these appeals, we allowed these matters to be argued.

It is necessary at the outset to state the history of this *inam*. In the village of Hebli there were in former times the usual service *watans* such as the *watans* of Patils, Kulkarnis and Nadgirs. These offices were held by the Nadgir family and they had in their possession 200 mars of *watan* lands in the village subject to the payment to Government of a fixed *judi* instead of full assessment, the revenue thus remitted being remuneration for the discharge of their duties. In the early part of the eighteenth century, the payment of *judi* fell into arrears and the ruling power, namely, the Nawab of Savnur, entered into possession of these *watan* lands and treated them as *kamavishi* or under his management for the purpose of realising the arrears. This was the state of things when in the year 1748 the ruling power granted the village to Heblikars in *jahagir*. The operative part of this grant is as follows:—

> "We have conferred upon you the said gallant gentleman (Balvantrao Appaji) the Kasba of Havur Hebli together with the hamlet and Vatanhal and lands appertaining to Zabt (i.e., attached) Inams of Muccadum and Nadgirs and others in the district of Torgal, by way of a perpetual *inam* exclusive of taxes relating to Ijrah Mukhasa and exclusive of Haqdars and Inamdars and exempting Kulbab Kulkannu."

The reference in the above quotation to the lands appertaining to Zabt Inams of Nadgirs relates to the 200 mars of land held in management by the ruling power on account of the failure of the Watandars to pay the *judi*. We are concerned in this litigation only with the 200 mars to which reference has been made in this grant. These lands continued to be shown as *kamavishi* in the accounts of the Heblikars, and this Court referred to this management of *kamavishi* lands in the followings terms in *Vithalrao* v. *Balwant*, (1936), 39 Bom. L. R., 572 at p. 580 :—

> "The utmost that can be said in favour of the Nadgirs is that their *watan* lands were not confiscated and that they voluntarily relinquished possession. Apparently there was a desire on the part of the Jahagirdars to rehabilitate the Watandars to their former position. That seems to be consistent with the view that they were prepared to treat the Nadgirs with indulgence in the matter of resumption of the lands if the arrears of *judi* were paid. Apparently the Nadgirs were not satisfied with those terms and were attempting to regain their *watan* through the intervention of the Collector free from any obligation whatsoever."

The Heblikar family is divided into three branches as shown in the genealogy reproduced in the judgment of the lower Court. The senior branch of Gururao holds an eight annas share and I shall refer to that branch as "the first branch". The junior branch descending from Ramchandrarao is again divided into two main sub-branches descending from Krishnarao and Raghunathrao. Each of these two sub-branches holds a four annas share. I shall refer to the branch of Krishnarao holding four annas as "the second branch" and that of Raghunathrao holding another four annas as "the third branch".

The *kamavishi* management of these 200 mars by the Heblikars continued till the year 1852, when Bombay Act, No. XI of 1852 came into force and an Inam Commission was appointed to enquire into the claims to exemptions from the payment of land-revenue. That Commission, after enquiring into the claims of the Heblikar Jahagirdars, found that there was no Sarva Inam. The Inam Commissioner said as follows in paragraphs 30 and 31 of his order:—

> "30. It appears clear therefore, that the original Grant of A.D. 1761-2 was neither revoked nor altered by the Peishwa, and that the villages claimed were made over and continued in lieu of the Saranjam of Rs. 12,000 per annum, sanctioned by the Peishwa. The allusion to them in the accounts, consequently, in any other terms than as Saranjam, is erroneous."
>
> "31. On the above grounds, the Inam Commissioner S. D. records his decision, that the Claimant's title to hold Casba Hebblee in Sarva Inam is invalid, but that its enjoyment is not to be interferred with in consequence of this decision."

This decision was approved by Government about the year 1856.

Thereafter there was an enquiry as regards the Kadim Inams and it appears from the judgment of this Court in *Vithalrao* v. *Balwant*, (1936) 39 Bom. L. R. 572, that the Jahagirdars in their letter to the Collector in the year 1862 repudiated the Wantandar Patils' claims to the lands, which were held in *kamavishi*, in the following words:—

> "From the time the village of Hebli was granted in Jahagir up to this day we have been enjoying all the lands. If after the grant of the Jahagir we and our ancestors have attached the lands of the Inamdars it would have been a matter

of loss to those persons and they would have lodged a complaint immediately. The claim before the Inam Commissioner was that the lands were enjoyed as khalsat lands and were not liable to the payment of *judi* to Government."

Upon the evidence tendered before him, Major Etheridge, Alienations Settlement Officer, made a recommendation to Government which is contained in exhibit 86 in this case. It is:

"6. It is to be remarked, however, that the land rolls referred to in para. proceedings, show that the Heblikar at the date of the acquisition of the village did not receive the items nos. 15, 16 and 17, averaging 200 mars, as *bona fide* Khalsat, but as Coomavisee, though, as it appears upon an order, dated in A.D. 1792, from Purashram Ramchandra Patwardhan, a competent authority, to Trimbukrao Anna, the Soobedar of the Dharwar Taluka. .....that the Coomavisee management.....at the date still remained as before, and as there is nothing to show that at any subsequent period even up to the present time it had altered, with the exception of 7¼ mars and 3 Bhigas which at some time unknown had reverted to the Nadgir, it may be allowed that the Coomavisee management of the remaining 192 mars and 6 Bhigas had assumed a permanency of tenure which cannot justly be interferred with.

"7. Under these circumstances Major Etheridge would suggest that the Gram Joshee's land of 6 Mars and the Nargeer land of 7¼ Mars and 3 Bighas be alone made amenable to settlement as half from Government, when the order for the settlement of alienated village shall be authorised. Sanction was solic ted in Major Etheridge's letter to Government No. 930, dated 11th Ultimo.

"8. The remainder, Major Etheridge now thinks, should belong to the Heblikars."

This recommendation of Major Etheridge was apparently accepted by Government, as will appear from a judgment of the Privy Council in *Laxmanrao* v. *Shriniwas*, (1927) 29 Bom. L. R., 1484 at 1490. The 42½ mars belonging to the share of Pandurangrao of the second branch and the 150 mars belonging to the first and third branches, continued to be in the possession of the respective Saranjamdars after this decision of Major Etheridge.

Thereafter, it appears that about 22 mars of land out of this property was again restored to the Nadgirs as a result of suit No. 83 of 1868 filed by the Nadgirs. This suit came in appeal to this Court in High Court Appeal No. 3 of 1876 [see *Ramchandrarav Raghunath* v. *Bhisto Shankar Nadgir*, (1877), P.J. 47]. Commenting on Major Etheridge's decision referred to above, the High Court made the following observations in that appeal:—

"It is not clear that the Inam Commissioner arrived at the conclusion that the land was absolutely the property of the Jahagirdars. But even if such were his conclusion, the Plaintiff (Nadgir) is not bound by a decision made in an inquiry to which he was not a party, and the object of which was simply to settle the respective rights of the Government and the Jahigirdars."

Although this was the observation of the High Court in the year 1876, the judgment of the Privy Council in the case of *Laxmanrao* v. *Shriniwas*, (1927), 29, Bom. L. R. 1484, would show that the decision of Major Etheridge was deemed to be binding not only on the Government and the Saranjamdar Heblikars, but also on the Nadgirs. That this is the effect of the Privy Council decision is also the view taken by Mr. Justice Broomfield in *Vithalrao* v. *Balwant*, (1936), 39 Bom. L. R. 572 at 590, although Mr. Justice Wassoodew was inclined to take a different view. The remainder of the property continued to remain with the Saranjamdars and was treated by them in the same manner as their other property. Apparently at that time no distinction was drawn between the Saranjam property and the Zabt property and both the properties came to be partitioned and divided between the various branches of the respective Saranjamdars, and by these partitions the *bhaubands* of the Saranjamdars came to be in possession of some portion of the Saranjam property and also some portion of the 200 mars of the Zabt property.

I have already stated that as a result of the Suit No. 83 of 1868 the Nadgirs came into possession of 22 mars out of the 200 mars of Zabt property. The Nadgir who obtained these 22 mars was the ancestor of the plaintiff in Suit No. 40 of 1945, from which Appeal No. 38 of 1948 arises. Following the decision in that appeal, it appears that the ancestor of the plaintiffs in Suit No. 37 of 1945 applied to the Heblikar, representing the first branch, for a share in these 200 mars of Zabt property, and it is the contention of the plaintiffs in that suit that 5¼ mars were given by the Saranjamdar to the Nadgirs. It would thus appear that about 34 mars of these 200 mars were lost to the Heblikars by this time, that is, 1878, 7½ mars were already in the hands of

the Nadgirs at the time of the settlement by Major Etheridge, 22 mars were obtained as a result of the litigation in Suit No. 83 of 1865, and 5¼ mars were subsequently given by the first branch to the ancestor of the plaintiffs in Suit No. 37 of 1945.

This state of things continued till the year, 1898, when Government issued the Saranjam rules and the practice began of resuming the Saranjam property on the death of the Saranjamdar and regranting the same to such person as Goverment thought fit. After these rules were promulgated in the year 1898, Pandurangrao, representing the second branch, died in the year 1899. In pursuance of the rules framed a year earlier, Government resumed all the property of the deceased Saranjamdar, including Pandurangrao's share in these 200 mars of the Zabt property. The *bhaubands* in possession of the various shares of both the Saranjam and Zabt property raised an objection to the resumption and regrant, their contention being that as the Saranjam itself was a grant of a royal share of the revenue, all that Government could do was to levy full assessment and not to dispossess the various holders of the Saranjam and other property. They, therefore, objected to the grant of the Saranjam to the great grandson of Pandurangrao, namely, Sardar Vithalrao, who was then a minor and whose property was being managed by the Collector of Dharwar. They, therefore, filed a suit in the year 1911 (No. 1 of 1911) against the Secretary of State for India, contending that Government had no right to resume and regrant the Saranjam after Pandurangarao's death first to Narasingrao and then to Sardar Vithalrao. The plaintiffs contended that the Hebli Jahagir was a Sarva Inam and that Government could at the most levy full assessment. The contention of Government, on the other hand, was that the grant was a political tenure subject to the rules of resumption and regrant. They urged that the plaintiff had no occupancy rights and that the suit was barred by the Revenue Jurisdiction Act. The District Judge held that the grant was Saranjam and that Government could resume the lands so held by the various *bhaubands* and regrant them to anyone whom they chose. He also held that the bar of the Revenue Jurisdiction Act applied and accordingly dismissed the suit. Against that decision, an appeal was filed to this Court and this Court held in *Gururao Shriniwas* v. *Secretary of State for India*, (1917), 19 Bom. L. R., 117, that the Saranjam was presumed to be a grant of the royal share of the revenue, that the right to possess lands did not form part of the Saranjam, that Government could, therefore, only resume what they had granted, namely, the royal share of the revenue, and that the right to occupy lands did not survive the resumption provided the lands were made liable to payment of full assessment. The matter was, however, taken to the Privy Council and their Lordships of the Privy Council reversed the decision of this Court see *Secretary of State for India* v. *Laxmibai*, (1923) 25 Bom. L. R., 527. They held that "A Saranjam grant may be either of the soil and the whole revenue derived from it, or a grant of the royal share of the revenue only. There is no presumption that the grant is a grant of revenue only. The quality of the grant must be determined on the facts of each case." In the case of the Hebli Inam they held that the grant was a grant of the soil itself and that it was within the power of Government to resume the lands themselves. Thus, ultimately it was decided that the *bhaubands* of the Saranjamdars had no right to possession. As a result of this decision of the Privy Council, Government ultimately granted the Saranjam to Sardar V. C. Heblikar, belonging to the second branch, and, on a similar contingency arising in the third branch, to Sardar L. N. Heblikar.

This decision of the Privy Council, however, did not directly decide the character of the 200 mars of land with which we are concerned in these appeals, although the lands resumed by Government on the death of Pandurang included not only the Saranjam lands but Pandurang's share in the Zabt lands. The exact nature of these lands was to some extent considered by the various Courts in another series of litigation which began under the following circumstances.

As a result of the passing of the Hereditary Offices Act (Act III of 1874), the Revenue Authorities began the preparation of a Watan Register for the Hebli Patils, Kulkarnis and Nadgirs. As pointed out in the judgment of the Privy Council in the case of *Laxmanrao* v. *Shriniwas*, (1927), 29 Bom. L. R., 1484 at 1492, the preparation of this Watan Register continued for a period of fifteen years. According to the order passed by him in 1907, the Commissioner held that under the Watan Act it was the imperative duty of the Collector to determine who were to be the representative *watandars* and register their names without waiting indefinitely until one or the other rival claimants to the offices of *watandars* procured the decision of a civil Court. He further directed that the Nadgirs should be shown to be the *watandars* as has been decided by the High Court in Appeal No. 3 of 1876 [see *Ramchandrrav Raghunath* v. *Bhisto Shankar Nadgir*, (1877), P.J. 47.] The Commissioner, therefore, upheld the Collector's decision in determining the members of the Nadgir family to be representative *watandars*. He was also of the opinion that the whole of the Zabt lands

should be entered as such in the Watan Register, namely, 80 mars for the Patilki *watan* and 40 mars for Kulkarni *watan* as shown in Major Etheridge's letter, dated the 9th of January 1865. The remaining 80 mars were for the Nadgir *watan*. He further directed that it would not be necessary to recover for the *watan*, from the Jahagirdars in possession, more than was required for the emoluments of the officiators under the Bombay Hereditary Offices Act. This order was confirmed by Government in the year 1908. In 1913 Rs. 969-0-8 were sought to be recovered under the act from the Saranjamdars as emoluments payable to the representative *watandars*.

Thereupon Sardar Laxmanrao Madhavrao Heblikar, who represented the first branch of the Jahagirdars, and who held an eight annas share in the Saranjam, filed a suit (Suit No. 2 of 1913), for a declaration that he and defendants Nos. 12 and 13 (representatives of the second and third branches), should be declared as Watandar Patils and Kulkarnis by reason of the grant of 1748 and, if not, by reason of a long and exclusive possession and enjoyment till 1908. He further sought for an order that the Watan Register should be cancelled after a declaration that the 120 mars of land entered in the Watan Register were not *watan* property and were not liable to contribution. He further prayed for the refund of the amount which had been recovered from him. The trial Court held that the decision of the Inam Commissioner was binding upon the parties that the plaintiff was entitled to the office of the Revenue Patil and Kulkarni, and that the Nadgirs, who were defendants Nos. 2 to 10 to that suit, were entitled to the office of Police Patil. He gave a declaration that 29¼ mars of land which were already in the possession of Pandurangrao were *watan* property and that 19 2/3 mars of land were not *watan* property. Against that decision an appeal was filed to this Court and was decided in the year 1921, in the case reported in *Shriniwas* v. *Secretary of State for India*, (1922) 24 Bom. L. R., 214. The High Court held, (1) that the manner in which the watan lands were treated both by Government and the Jahagirdars showed that the lands had not become the absolute property of the Jahagirdars; (2) that it was not competent to the Jahagirdars to acquire the offices of Patils and Kulkarnis by adverse possession; and (3) that, assuming that the Nadgir defendants were entitled either by agreement or by custom to get back their *watan* land on payment of *judi*, time would not begin to run against them until they were made aware that the Jahagirdars were setting up a title to hold the *watan* lands in their own possession and that there was nothing to show that the Nadgirs were aware of any alteration in the method of keeping the village accounts.

This decision of the High Court that the lands still partook of *watan* character had a twofold effect. As a result of this decision, Government issued a resolution in the year 1924, No. 923 of 1924, dated the 27th of March 1924. Against the decision of the High Court, an appeal had been filed to the Privy Council, and the Government resolution referred to above realised that any orders that were to be passed were subject to the final decision of the Privy Council. Paragraph 4 of that resolution says as follows:—

> "The Governor in Council agrees with the Commissioner that the Kadim Patilki, Kulkarni and Nadgir lands are not to be resumed and regranted to the two grantees, who are entitled only to the right to Mamul Judi. This right should be regranted along with other Saranjam property.".

Another result of the decision of the High Court was the filing by the Nadgirs of a Special Jurisdiction Suit No. 34 of 1924, in the Court of the First Class Subordinate Judge at Dharwar, because the High Court had held in the litigation between the Secretary of State for India and the Saranjamadars that the manner in which the property was treated showed that it had not become the absolute property of the Jahagirdars. The Nadgirs filed the suit No. 34 of 1924 against Sardar Vithalrao Heblikar of the second branch for possession, with mesne profits, of 47¼ mars of land on the allegation that the property had been held in trust by the Saranjamdars and that the Nadgirs were entitled to recover possession of that property.

As a result of the Government Resolution of 1924, the *bhaubands* continued the payment of the *judi* to the Saranjamdars. But the judgment of this Court was reversed by the Privy Council when the matter went up before them and the judgment of the Privy Council is reported in *Laxmanrao* v. *Shriniwas*, 29 Bom. L. R. 1484, in which their Lordships held that the lands in question were not liable to pay contribution for the remuneration of the officiators. Their Lordships expressed their view at page 1496 in these words:—

> "In these circumstances, their Lordships see no sufficient reason to differ from the District Judge's conclusions that the effect of the decision was to render the suit lands in the hands of the plaintiff and defendants Nos. 12 and 13 not liable to contribution under Act III of 1874.".

They accepted the District Judge's view that these lands had ceased to be *watan* lands. When this decision was given in the year 1927, the two defendants Sardars ceased to recover *judi* from the *bhaubands* in possession of these lands.

But soon after this decision of the Privy Council, the First Class Subordinate Judge of Dharwar, decided Special Suit No. 34 of 1924, and he gave his judgment on the 21st of December 1928. In this he held that the defendants, namely, the Saranjamdars, were in possession of *watan* lands as trustees for the plaintiff, that the trustees had openly asserted their hostile title to the knowledge of the plaintiff and that the plaintiff's claim was not barred by limitation. He also found that having entered into possession on certain terms the Jahagirdars were estopped from denymg the Nadgirs' title or from setting up an adverse title, though the matter would have been different if the plaintiffs had made an offer to pay *judi* and there was a refusal to accept the same. The judgment of the First Class Subordinate Judge, however, was reversed by this Court in *Vithalrao* v. *Balwant*, (1937) 39 Bom. L. R. 572. This Court held that the Saranjamdars did not stand to the plaintiffs Nadgirs in a fiduciary or semi-fiduciary position and, therefore, could not be regarded as being in a position of trustees. This Court further held that the suit was also barred by limitation. Accordingly the suit of the Nadgirs was dismissed.

Before, however, this decision was given in 1937, the Jahagirdars, pursuant to the decision of the First Class Subordinate Judge of Dharwar, in December 1928, again began to recover *judi* from the *bhaubands*, their view being that the lands were declared to be *watan* lands under this judgment and that the *judi* was recoverable in respect of those lands in whosesoever possession the lands might be for the time being. They, therefore, filed assistance suits to recover *judi* from the *bhaubands* basing their title to do so specifically on the judgment of the First Class Subordinate Judge in Special Suit No. 34 of 1924. Thereupon the *bhaubands* filed several suits against the Saranjamadars, one of which was Suit No. 475 of 1932 in the Court of the Subordinate Judge at Dharwar, alleging that the Saranjamdars were not entitled to recover any amount by way of *judi* from them. The defendant in that suit was Sardar Vithalrao Heblikar of the second branch and in the written statement filed by him he stated his contention, viz., that the lands in question were *saranjam* property, but whether these lands were *saranjam* or *inam* or of any other tenure was not relevant to that suit, and that therefore no detailed contentions were taken. He specifically based his defence to the suit on the decision of the First Class Subordinate Judge of Dharwar in Special Suit No. 34 of 1924 in which the lands were according to him declared to be *watan* lands. He added that he believed on the strength of the Privy Council decision that the suit lands were not *watan* lands but in view of the decision of the Special Suit No. 34 of 1924, the *bhaubands* had become liable to pay *judi* being in enjoyment of *watan* lands. He added that it was on the strength of that decree alone that he had filed assistance suits for recovering the *judi*. He went to the length of saying that in the event of a decision of the High Court in appeal that the suit lands were not *watan* lands, he was ready to abide by that decision and refund the whole of the amount of the *judi* recovered from the plaintiffs *bhaubands*. The learned trial Judge decided the suit before the judgment of this Court was given in appeal against the decision of the First Class Subordinate Judge in Suit No. 34 of 1924. The learned Judge held that it was not proved that the lands in question were not liable to pay judi and he accordingly refused to grant a declaration and an injunction that were sought by the *bhaubands*. The suits were dismissed with costs. Against that order, appeals were filed to the District Court and were heard by me as District Judge of Dharwar. By the time the matter came to be argued before me, the High Court had decided the appeal against the decision in Suit No. 34 of 1924, and, as I stated above, they held that the Heblikars were not in the position of trustees, and dismissed the suit filed by the Nadgirs. Inasmuch as the suits filed by the *bhaubands* were based on the action taken by the Heblikars in pursuance of the decision in Suit No. 34 of 1924 and as that decision had been reversed in appeal by the High Court, I came to the conclusion that the defendant Sardar V. C. Heblikar was not entitled to recover *judi* from the *bhaubands*. The defendant had even offered to refund the amount if the decision of the First Class Subordinate Judge in Suit No. 34 of 1924 was reversed in appeal and, in my view, as the defence had failed, the plaintiffs' suit had to be decreed. I accordingly reversed the decision of the trial Court and gave a declaration that Sardar V. C. Heblikar had no right to collect the *judi* from the plaintiffs and that he should be restrained permanently from collecting any sum as *judi*. Against that order, it appears that a second appeal was filed in this Court and it came up for hearing before the learned Chief Justice and Mr. Justice Sen on the 21st of December 1939. It appears that the defendant was allowed to raise a plea that his right was based not merely on the decision of the First Class Subordinate Judge in Suit No. 34 of 1924, but also on the ground that this was a Saranjam right and that the property was a Saranjam property. The learned Chief Justice held that in view of the Privy Council decision in *Secretary of State* v. *Laxmibai*, (1923), 25 Bom. L. R. 527, in which litigation even the right to these 200 mars of land was involved, it was not open to the High Court to hold that the 200 mars were not Saranjam lands. He added : "But to my mind it is impossible for us to hold that this was the private property of Pandurangrao.

In the first place, I think the decision of the Privy Council in *Secretary of State for India* v. *Laxmibai* decides to the contrary, although no doubt the distinction between the 200 mars and the rest of the village was not brought to the attention of the Board. In the second place, it seems to me to be too late for the plaintiffs to challenge the title of Government. Government in fact did resume possession, rightly or wrongly, of the whole of Pandurangrao's share of the property, including the suit property, about 1901, and in the only litigation in which Government's title to resume possession was challenged, the title was upheld. In my opinion, we must hold that the property in suit is Saranjam land and only title which the plaintiffs have got arises under the grants to them in Exhibits 65 and 113 which were subject to the payment of Mamul *judi*." Accordingly the plaintiffs' suit was dismissed.

After this decision was given in December 1939, Sardar V. C. Heblikar, belonging to the second branch, died in the year 1943, and thereupon Government issued a Resolution No. 923, dated the 2nd of August 1944 (exhibit 79). In paragraph 4 of that resolution the following orders were issued:—

> "In view of the Privy Council's decision in *Laxmanrao* v. *Shrinivas* (29 Bom. L.R., 1484), the *watan* lands referred to in paragraph 4 of Government Resolution, Political Department, No. 923, dated the 27th of March 1924, are no longer *watan* lands, with the exception of 7¼ mars and 3 bighas comprised in the enclosed statement 'A'. The right to the *mamul judi* on the 7¼ mars and 3 bighas should be regranted to the new Saranjamdar along with the Saranjam property. The lands in the possession of Raghunathrao Krishnarao, Ramrao Govindrao and Laxmibai Bhratar Gururao shown in the enclosed statement 'B' should be removed from the *watan inam* category and formally resumed and regranted along with the rest of the Saranjam. The persons in actual possession of the lands should not be disturbed. They should, however, continue to pay to the principal Saranjamdar of this branch the amout which they have been paying as 'Mamul *judi*', the amounts being described hereafter as 'rent,'". ....

The same principle was observed when Sardar Govindrao Heblikar belonging to the first branch, holding eight annas, died in the year 1943. In respect of this branch also, another resolution was issued by Government, namely, Government Resolution No. 923, dated 7th September 1945. It stated, *inter alia*:

> "On the analogy of the orders in paragraph 4 of Government Resolution, Political and Services Department, No. 923, dated the 2nd August 1944, Government is pleased to direct that the 84 Survey Nos. mentioned at Nos. (1) to (4) should be transferred from the *watan* to the Saranjam category. In consequence, the lands at (3) and (4) should be resumed and held under Government management for eventual regrant with the rest of the estate. The lands at (1) and (2) were granted by the late Saranjamdar to his brother and mother, respectively, for maintenance. As the brother has not been provided for and as he is the natural brother of the late Saranjamdar, the lands given to him should, after formal resumption, be continued to him as an act of grace. The lands given to the mother should also, after formal resumption, be continued to her. The lands at No. (5), (that is those in the possession of the Nadgirs).....should be treated as lost to the Saranjam and assessed under section 45 of the Land Revenue Code, the assessment being credited to Government".

This resolution has given rise to two of the suits from which the present appeals arise. Suit No. 39 of 1945 has been filed by Shrinivasrao, the uncle of the new Saranjamdar, in which a claim is made that Government had no right to treat this property as Saranjam property. The Nadgirs who are the holders of the alienated lands mentioned at item No. (5) of the Government Resolution dated 7th September 1945, have filed Suit No. 37 of 1945, in which again the contention has been taken that Government had no right to resume the lands, although under the Government Resolution their possession was not being disturbed.

The principle of these two Government Resolutions was extended to the third branch of this Jahagir by an order which is exhibit 90 in this case. It is Resolution No. 923, dated the 8th of August 1946. *Inter alia*, it states that on the analogy of the orders issued in Government Resolution, Political and Services Department, No. 923, dated the 2nd August 1944, these lands, (that is, the lands belonging to that branch of the Heblikars), should be declared as Saranjam lands and allowed to continue with the present holders who belong to the Saranjam family. This resolution again has given rise to two suits. Suit No. 38 of 1945 is a suit filed by the grandsons of the Saranjamdar who objected to these lands being treated as Saranjam lands, although their possession was not being disturbed, and they were merely ordered to pay Mamul *judi* to Sardar L. N. Heblikar. Among the lands belonging to this branch of the family which were dealt with by Government Resolution, were the 22 mars of land which were acquired by Nadgirs in the year 1868 and were still in their po[illegible]
With respect to this, the Government Resolution stated:

"The Nadgirs have been in continuous possession of these lands for more than 60 years. On the analogy of the orders issued in Government Resolution, Political and Services Department, No. 923, dated the 2nd August 1944, these lands should be made liable to full assessment under section 45 of the Land Revenue Code, the assessment being credited to Government. The Saranjamdar is not entitled to the restoration of these lands but only to 'mamul judi'. An amount equal to the 'mamul judi' should therefore be paid to him from Government treasury in annual cash allowance."

Shripad Basavant Nadgir, who is affected by this direction, filed Suit No. 40 of 1945, contending that Government were wrong in treating this property as Saranjam property and directing formal resumption of it, although his possession was not being disturbed under the Government orders.

All these four suits were tried together as they involved a common question of law, namely, the precise nature of the tenure of these lands after the Privy Council decision in *Laxmanrao* v. *Shrinivas*, (1927), 29 Bom. L. R. 1484. All these suits were resisted by Government who contended that as the lands had ceased to have *watan* character they could only be regarded as being Saranjam lands forming part of the original grant, and that, as they were Saranjam lands, the Government Resolution of 1944 and the subsequent Resolutions issued on the analogy of that Resolution were legal and valid and were binding on all the parties concerned. Government also took some formal defences, namely, those of *res judicata* and a bar under section 4 of the Bombay Revenue Jurisdiction Act.

All these suits were heard together by the learned Civil Judge, Senior Division, Dharwar, and he came to the conclusion that, so far as the property in the hands of the *bhaubands* was concerned, the property was Saranjam property and was liable to be resumed and regranted as Government had done in the Resolutions of 1944, 1945 and 1946. Accordingly he dismissed the two suits filed by the *bhaubands*, namely Suits No. 38 of 1945 and No. 39 of 1945. He, however, took the view that the lands in the possession of the Nadgirs were still *watan* lands and not Saranjam lands and that therefore they could not be resumed and regranted. He accordingly decreed the two suits filed by the Nadgirs, namely, Suits No. 37 of 1945 and No. 40 of 1945, and gave a declaration that the Government Resolutions of the years 1944, 1945 and 1946, so far as they affected the suit lands, and the subsequent instructions issued to the Village Officers to effect the alterations in the Village Registers, were *ultra vires*, illegal and void. He also declared that the resolutions and the subsequent instructions could not affect the suit property in the possession of the plaintiffs. Against these decisions, these four appeals have been filed. Appeals Nos. 37 and 38 of 1948 have been filed by Government against the declaration given in favour of the Nadgirs in Suits Nos. 37 and 40 of 1945. Appeals Nos. 47 and 48 of 1948 have been filed by the *bhaubands* against the dismissal of their suits Nos. 38 and 39 of 1945. All these appeals have been heard together and this judgment will deal with all those appeals.

The narrow point which falls to be determined in these appeals is the precise nature of these 200 mars of Zapt property after the decision of the Privy Council in *Laxmanrao* v. *Shrinivas*, (1927), 29 Bom., L. R. 1484. In the view taken by Government, these properties are Saranjam properties which are liable to be resumed and regranted. This view involves the liability of resumption of these lands on the death of the Saranjamdars and their regrant to any person selected by Government and also the liability on the part of the holders of payment of rent to the Saranjamdars. It is in order to avoid these two liabilities that these present suits have been filed, and it is contended that whatever may be the tenure of the properties they could not be regarded as Saranjam lands. Government, on the other hand, contend that these properties could only be regarded as Saranjam properties in view of the grant made in the year 1748, and the subsequent adjudication with respect to these lands by Major Etheridge in the year 1864.

The first point that was taken by Mr. Krishnaswami in support of these appeals was that when the grant was made in the year 1748 by the then ruling power these lands were under management and therefore Government had no absolute title to pass in respect of these lands. He, therefore, argued that it was impossible to hold, under these circumstances, that Government could create a Saranjam in respect of these lands. This argument involves the proper construction of the grant of the year 1748. The words actually used are :—

"We making up our mind to honour your gallant self have conferred upon you the said gallant gentleman the Kasba of Havur Hebli together with the hamlet and Vatanhal and lands appertaining to Zebt (i.e. attached) Inams of Muccadums and Nadgirs and others in the District of Torgal, by way of a perpetual Inam exclusive of taxes relating to Ijarh Kukhase and exclusive of Haqdars and Inamdars and exempting Kulbab Kulkannu."

It appears to us that this is essentially a grant of the whole village. But it is made clear that the grant includes certain lands of Nadgirs which were under attachment. Therefore, whatever rights the ruling power then had with respect to this village and these 'attached lands' were granted to the Inamdar. With respect to the whole of the village, the grant was complete, but with respect to these 200 mars of land it was made clear that the lands were under attachment and whatever right Government had in respect of the attached lands were transferred to the grantee. In our opinion, the grant was a complete grant, but that in respect of these 200 mars of land there was a certain impediment in the shape of the liability of returning these lands to the Nadgirs in case the Nadgirs were in a position to pay the arrears of *judi*. Once this impediment of its being regarded as attached property disappeared, we do not see how any distinction could be drawn between the grant with respect to the whole of the village and that with respect to these 200 mars of land. They must, in our opinion, partake of the same character as the rest of the grant, which was a grant in Saranjam Inam to the Heblikars. In our opinion, the ruling power could not have intended to confer upon a grantee in respect of these 200 mars of land a higher title than what was intended to be conveyed in respect of the rest of the village. That would be the necessary consequence of the submission made by Mr. Krishnaswami that with respect to these two lands the position was that they had become a private heritable and transferable property of the Inamdars.

Mr. Krishnaswami next argued that the effect of the decision of Major Etheridge in the year 1864 was to convert these lands from *kamavishi* lands or lands under attachment into lands partaking of the nature of private property of the Saranjamdar. That leads us to the consideration of the precise wording of the order of Major Etheridge. The exact wording of the order has already been referred to by me in narrating the history of this Jahagir. It would be noticed that Major Etheridge had held that certain lands were Government property, e.g., serial No. 13. In respect of serial No. 7, he was clearly of the opinion that it formed part of the Kadim Inam, but he realized that with respect of the 200 mars of land at serial Nos. 15, 16 and 17 the position was somewhat anomalous. He was of the view that the Heblikars had not acquired those lands as *bona fide* Khalsat, but because the *kamavishi* management had at the date of his order remained as before and because there was nothing to show that at any subsequent period it had altered, it had to be allowed that the *kamavishi* management of the remaining 192 mars and 6 bighas of land had assumed a permanency of tenure which could not justily be interfered with. He, therefore, recommended that they should belong to the Heblikars. Mr. Krishnaswami has emphasized the words "should belong to Heblikar" used by Major Etheridge, and he has argued that these words mean that they became the private, heritable and transferable property of the Saranjamdar. In our opinion, this submission cannot be accepted. Major Etheridge was obviously dealing with the case of Kadim Inams and he found certain lands as belonging to Government and certain others to Kadim Inamdars. These lands had already been held as Kadim in the year 1862. But owing to the discovery of certain new material, he came to the conclusion that they were continually in the possession of the Saranjamdars and had been treated by them as *kamavishi*. If they had been held as Kadim,—as was his earlier view—then they would undoubtedly have gone to the Nadgirs; but having found that the Saranjamdars were in continuous possession of these lands he was reluctant to declare that they should go back to the Nadgirs as Kadim Inam but was willing that they should continue in the possession of the Saranjamdars. This is all that he meant by saying that they should belong to the Heblikars. All that he could have meant was that these lands which had been excluded from the settlement made by Major Gordon in the year 1856 should be of the same character as the lands held by Heblikars under the settlement made by Major Gordon. Major Gordon and Major Etheridge were deciding the rights of the holders of the lands to hold them, partially or wholly, exempt from payment of assessment. It was entirely beyond the competence of either Major Gordon or Major Etheridge to create a tenure of private, heritable and transferable property. If Mr. Krishnaswami's contention were to be accepted, it would mean that Major Etheridge had conferred upon these lands an entirely new tenure, which was even better than the tenure in respect of the rest of the village. We, therefore, interpret these words "the remainder should belong to the Heblikars" as meaning that "the Heblikars should continue to hold them in precisely the same manner as they were holding the rest of the village, namely, as a part of the Jahagir."

It was next argued by Mr. Krishnaswami that after the year 1864, the Saranjamdars had been treating these lands in their books as private property and not as *kamavishi*. If we assume that this was so, it would merely be an entry by the Saranjamdars in their own interest. If Mr. Krishnaswami's contentions were correct that the result of Major Etheridge's decision is to convert this property into private property of the Saranjamdars, we should have found some entry somewhere in Government records

distinguishing these lands from the rest of the Saranjam property. But although we repeatedly asked the learned advocate to indicate any document in which such a distinction has been made, or where these properties had been treated as private properties of the Saranjamdars, he was unable to lay his finger on any document.

We again have to note that, after the death of Pandurangrao of the second branch, the Saranjam property was resumed by Government and the resumption included even these 200 mars of the Zept property. It was in pursuance of this that a suit was subsequently filed which ultimately resulted in the decision of the Privy Council in *Secretary of State for India* v. *Laxmibai*, (1923) 25 Bom., L.R., 527. At that time Gururao who had filed the suit was claiming his 1/16th share in the property by partition on the footing that Government had no right to resume these lands. It will be noted that no distinction was drawn by the plaintiffs in their suit between the rest of the Saranjam Inam and Pandurangrao's share in these 200 mars of Zept property. If the share in these 200 mars was a private, heritable and transferable property, there should have been no hesitation in his asking for a share by partition in respect of these lands, whatever may be the fate of the suit with respect to the resumption and regrant of the rest of the Saranjam. Ultimately when the matter went up to the Privy Council it was held that the Government had a right to resume the whole of the Saranjam and regrant it to anyone whom they chose and in making this resumption and regrant, the property involved was not only the rest of the village but also Pandurangrao's share in these 200 mars of Zept property. That this is a possible interpretation of the Privy Council decision is clear from what Sir John Beaumont, C. J. said in Second Appeals Nos. 583, 587 and 592 of 1937. The learned Chief Justice observed:—

> "But to my mind it is impossible for us to hold that this was the private property of Pandurangrao. In the first place, I think the decision of the Privy Council in Secretary of State for India *v.* Laxmibai decides to the contrary, although no doubt the distinction between the 200 mars and the rest of the village was not brought to the attention of the Board .....Government in fact did resume possession, rightly or wrongly, of the whole of Pandurangrao's share of the property, including the suit property, about 1901, and in the only litigation in which Government's title to resume possession was challenged, the title was upheld. In my opinion we must hold that the property in suit is Saranjam land and only title which the plaintiffs have got arises under the grants to them in Exhibits 65 and 113".....

It was then contended by Mr. Krishnaswami that Government had continually taken up the position that these lands were *watan* lands and had never contended that they were Saranjam property. In the suit that was filed in the year 1913, (No. 2 of 1913) for a declaration that the lands in the possession of the Saranjamdars were not liable for contribution for the payment of remuneration of the officiators, Government contended that these properties were *watan* properties, and Mr. Krishnaswami argued that, having taken up that position, it was not open to Government now to contend that these properties were Saranjam properties. Undoubtedly throughout a large part of this litigation both the parties were under the impression that these properties were *watan* properties. It was on this footing that even in Suit No. 2 of 1913 the Heblikars themselves claimed that they were the Patils, Kulkarnis and Nadgirs of this village and claimed the right to be declared as entitled to these offices. Government, on the other hand, contended that the Nadgirs were the rightful watandars of this village and that the lands in the possession of the Heblikars were liable to pay contribution for the officiators' remuneration. The dispute was set at rest by the decision of their Lordships of the Privy Council, wherein they held that these lands had ceased to be watan lands and were not liable to pay contribution for the remuneration of the officiators. Merely because Government took an incorrect stand, it did not follow that they were precluded from contending now that these lands were Saranjam property. The learned Chief Justice in his judgment in the second appeals referred to above states, "It was competent to Government to impose such burden and the fact that the Government while imposing it were under an erroneous belief as to the nature of the property cannot affect the legality of the burden.". The burden, that the learned Chief Justice refers to, is the liability of the payment of the Mamul judi to the Saranjamdars. But it is to be noted that even in that suit the Heblikars said that their tenure was not a *watan* tenure, but some other kind of tenure, without specifying what that tenure was.

It was then argued by Mr. Krishnaswami that in paragraph 4 of the Government Resolution No. 923, dated the 27th of March 1924, Government had taken up the position that the Kadim Patilki, Kulkarni and Nadgir lands were not to be resumed and regranted

to the two grantees, who were only entitled to the Mamul judi, and he pointed out that this resolution was passed after the Privy Council decision in *Secretary of State for India* v. *Laxmibai,* (1923) 25 Bom. L.R. 527. His argument was that if the effect of the Privy Council decision was to convert these lands to Saranjam lands, Government could not have issued the resolution in the terms in which it was issued saying that the Patilki, Kulkarniki and Nadgir lands were not to be resumed and regranted. But it is to be remembered that when this resolution was issued this Court had already decided the case reported in *Shrinivas* v. *Secretary of State for India,* (1922) 24 Bom. L.R. 214, raising the question of the liability of these lands for the payment of contribution for the remuneration of the officiators. It is true that the judgment of this Court in *Shrinivas* v. *Secretary of State for India,* (1922) 24 Bom. L.R. 214, was subsequently set aside in *Laxmanrao* v. *Shrinivas,* (1927) 29 Bom. L.R. 1484, but at the time when this resolution was issued in 1924, the decision of this Court in *Shrinivas* v. *Secretary of State for India,* (1922), 24 Bom. L.R. 214, held the field and it was decided by this Court that the manner in which the *watan* lands were treated both by Government and the Jahagirdars showed that they had not become the absolute property of the Jahagirdars. Government had, therefore, to respect the decision of this Court which in express terms held that these lands were still *watan* lands, a view which subsequently did not find favour with their Lordships of the Privy Council. Lastly, when the matters came up before this Court in the second appeals referred to above, this question, which we have to deal with, was specifically raised in a litigation between the *bhaubands* and the Saranjamdars, and both the learned Judges who decided those second appeals held that the property must be held to be Saranjam land and that it was impossible to hold that this property was the private property of Pandurangrao.

It is quite clear that these lands could not be held to be *watan* lands after the decision of the Privy Council. Once they lost their *watan* character, they must, in our opinion, be regarded as on the same footing as the lands which were included in the grant of 1748, namely, lands held on a Saranjam tenure. The Heblikars owe their possession by that grant and they could not obtain a title higher than that conferred on them with respect of the rest of the village. All that could be held was that the impediment in the way of a complete grant of Saranjam had been removed by the decision of the Privy Council in which it was held that these lands were not *watan* lands.

It was argued by Mr. Hungund that the decision of Major Gordon proceeded on the interpretation of the Sanad not of 1748, but of the Sanad of 1761-62, and he suggested that the adjudication of Major Gordon was not in respect of the Sanad of 1748. It is true that Major Gordon does not specifically refer to the Sanad of 1748, but there are indications in his order which show that he was aware of the fact that the original grant had to be traced to the grant made by the Nawabs of Savnor and it has nowhere been suggested that the Nawabs of Savnor made any grant other than the one of the year 1748. He also says that these two hamlets were in the possession of Balvantrao and that the Kasba Hebli was *confirmed* by the Peshwas to Balvantrao Appajee. It is therefore clear that he was dealing with a Sanad which confirmed the grant which had been earlier made by the Nawabs of Savnor to Balvantrao Appaji. Throughout the litigation which is going on over hundred years, it has never been suggested that the adjudication made by Major Gordon was with reference to a wrong Sanad and therefore it could be ignored as such. In the absence of any evidence to show that the Sanad with which Major Gordon was dealing was something different from the Sanad of 1748, we must assume, as has been assumed throughout the course of the litigation during the last century, that the adjudication of Major Gordon was with reference either to a Sanad of 1748 or to another Sanad which was merely a replica of that Sanad. The interpretation of that Sanad has always been held to be creating a Saranjam Jahagir in favour of the Heblikars. The Sanad creates a Saranjam in favour of the Heblikars in respect of the whole of the village, and we must conclude that the 200 mars of land, when they ceased to be watan were to be regarded as forming part of the original Jahagir. For all these reasons, we are of the opinion that the view taken by the learned trial Judge with respect to Suits Nos. 38 and 39 of 1945 is correct and Appeals Nos. 47 and 48 of 1948 must, therefore, be dismissed with costs.

Then we come to Appeals Nos. 37 and 38 of 1948 which have been filed by Government against the decision which has been given in favour of the Nadgirs. So far as Appeal No. 38 is concerned, we understand that the matter has been compromised between the parties and the terms of the compromise are:—(1) that the plaintiff's suit should be dismissed; (2) that the defendant, namely, the Government of Bombay, should pay the plaintiff's costs in the trial Court; and (3) that the parties should bear their own costs in this Court. Therefore, in terms of this compromise, we set aside the decree of the trial Court and direct that a decree in terms of the compromise be substituted in its place.

With regard to Appeal No. 37 of 1948, the position is that there are six plaintiffs. Plaintiffs Nos. 1, 2 and 6 have compromised the suit with the defendant, the Government of Bombay, and the terms of the compromise are the same as in Appeal No. 38 of 1948. Therefore, so far as their appeal is concerned, we direct that the suit of plaintiffs Nos. 1, 2 and 6 should stand dismissed, that Government should pay the costs of plaintiffs Nos. 1, 2 and 6 in the trial Court (in one set). and that the parties should bear their own costs of this appeals. So far as plaintiffs Nos. 3, 4 and 5 are concerned, the appeal survives. But Mr. Krishnaswami on behalf of plaintiffs Nos. 3, 4 and 5 has not contested the appeal. We, therefore, direct that the appeal should be allowed and that the decree of the lower Court should be set aside. We understand that the same terms as were offered to plaintiffs Nos. 1, 2 and 6 were offered to these plaintiffs also by Government, but they have not been so far accepted. We think that the terms which have been offered by Government to these plaintiffs also should be adhered to. We, therefore, direct that the suit of plaintiffs Nos. 3, 4 and 5 should also be dismissed, that Government should pay the costs of plaintiffs Nos. 3, 4 and 5 in the lower Court (in one set) and that the parties should bear their own costs of the appeal in this Court.

By order of the Court,

Exd by:—M. L. S.

(Signed) S. H. BELAVADI,

Deputy Registrar.

True Copy.

For Deputy Registrar.

The 9th day of August 1951.

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HIGH COURT BOMBAY APPELLATE SIDE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Tuesday the 12th day of December 1950.

APPEAL NO. 37 OF 1948 FROM ORIGINAL DECREE

(With First Appeal No.38 of 1948)

The Province of Bombay, through the Collector, Dharwar (Original Defendant) ... ... Appellant

versus

1.Ramabai kom Shreenivasrao Nadgir; 2.Shankar Basvant Nadgir 3.Krishnaji Krishnagouda 4.Ramchandra Narayan now major 5.Dattatraya Narayan; Respondent No. 4 and 5 minor (~~now major~~) by his next friend Krishnaji Krishnagouda; 6.Venktesh Bhimaji (Original Plaintiffs) ... ... Respondents.

Amended vide Court's order dated 2/12/49 on C.A. 1670/1949.

Claim ---- Rs. 200-0-0 for Court fees
Rs. 13500-0-0 for Advocate's fees.

The Plaintiffs sued for a declaration that the G.R.P.D. No.923, dated 2nd August 1944, does not affect Plaintiff's estate of Hebli and the subsequent instructions in the said resolution to effect alterations in the suit property in the possession of Plaintiffs are ultra vires, illegal and void and costs of the suit.

The Special Original Suit No.37 of 1945 was decided by

the Civil Judge (Senior Division) of Dharwar who decreed it with costs as detailed in the judgment.

An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Honourable Mr. Justice Bavdekar on the 6th day of February 1948.

The grounds of objection to the decision appealed against are :-

1.That the learned trial Judge should have held that the suit property was Saranjam property and not Watan property.

2.That it was wrong to hold that Government was estopped from contending that the suit property was Saranjam property.

3.That the learned trial Judge should have held that the suit was barred under Section 4 of the Revenue Jurisdiction Act.

4.That the learned trial Judge erred in holding that Government Resolutions did not affect the suit property.

5.That the decree is contrary to law and the weight of evidence on the record.

Coram: Rajadhyaksha and Vyas, JJ.

For the reasons stated in the accompanying judgment, the Court, in terms of the compromise arrived at between the appellant and respondents Nos.1,2 and 6 (plaintiffs Nos. 1,2 and 6) sets aside the decree of the lower court so far as the claim of plaintiffs 1,2 and 6 against the appellant is concerned and substitutes the following decree in their respect.

1) Plaintiffs Nos. 1,2 and 6's suit is dismissed.

2) The defendant, the Government of Bombay shall pay plaintiffs Nos.1, 2 and 6's costs in the trial Court in one set.

3) Plaintiffs Nos.1,2 and 6 and the Appellant shall bear their own costs of the appeal ~~x~~ in the High Court.

So far as the appeal against ~~Plaint~~ Plaintiffs Nos.3, 4 and 5 is concerned, the Court allows the appeal, sets aside the decree of the lower Court so far as the claim of plaintiffs Nos. 3,4 and 5 against the appellant is concerned and dismisses their suit. The Appellant to pay the costs of plaintiffs Nos. 3, 4 and 5 in the lower Court in one set. Parties shall bear their own costs of the appeal in the High Court.

Sd/- S.H. Belavadi.
12th December 1950. Deputy Registrar.

Bill of costs in the High Court

By the Appellant	Rs.As.Ps.
Stamps for memorandum of appeal	18.12. 0.
Stamps for copies of decrees and judgments	3.12. 0.
Stamps for vakalatnama (G.P. appears.)	0. 0. 0.
Stamps for applications for showing Respondent No.4 as major	5. 0. 0.
Bhatta for Process	25. 0. 0.
Sectioner's fee	74. 5. 0.
Advocate's fee	325. 0. 0.
Printing charges	11. 0. 0.
Copying & charges for preparing paper-books.	6. 0. 0.
Stamps for affidavit	1. 0. 0.
Total Rs.	469.13. 0.

By Respondents Nos.1,2 and 6	Rs.As.Ps.
Stamps for vakalatnama	5. 0. 0.
Advocate's fee	325. 0. 0.
Total Rs.	330. 0. 0.

By Respondents Nos.3,4 and 6	Rs.As.Ps.
Stamps for vakalatnama	5. 0. 0.
Advocates' fee (two advocates appear)	650. 0. 0.
Total Rs.	655. 0. 0.

(Seal)

Sd/- S.H. Belavadi.
Deputy Registrar.
The 12th day of December 1950

True copy

for Deputy Registrar.

The 8th day of March 1951.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY